TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~391~~. 188

THE MANHATTAN LIFE-INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

R. S. BUCK, EXECUTOR OF CHARLES L. BUCK, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 17, 1875.

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a 40 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea which is in the circuit court before you, between R. S. Buck, as executor of Charles L. Buck, deceased, and the Manhattan Life-Insurance Company, a manifest error hath happened, to the great damage of the said Manhattan Life-Insurance Company, as by the complaint of said company appears: We, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 6th day of June, in the year of our Lord one thousand eight hundred and seventy-four, and in the 98th year of the Independence of the United States.

[SEAL.] GEO. T. SWANN,
Clerk of the Circuit Court of the United States for South. Dist. Miss.

Indorsed: 1770. U. S. circuit court, south. dist. Miss. R. S. Buck, exor., &c., vs. Manhattan Life-Insurance Company. Writ of error. Filed June 6th, 1874. Geo. T. Swann, clk.

b UNITED STATES OF AMERICA, *ss:*

To R. S. Buck, as executor of Charles L. Buck, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Mississippi, wherein the Manhattan Life-Insurance Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the honorable the judge of said court for the southern district of Mississippi this 4th day of June, 1874.

R. A. HILL,
United States District Judge for Mississippi,
Sole presiding in said Circuit Court.

c UNITED STATES OF AMERICA, *ss:*

THE STATE OF MISSISSIPPI,
Warren County:

Personally appeared before me, Laz. Lindsay, commissioner of the United States court for the southern district of Mississippi, John D.

Gilland, who, having been by me duly sworn, deposeth and saith that he did, this tenth day of June, 1874, serve the within citation on R. S. Buck, as executor of Charles L. Buck, deceased, by delivering to him a true copy of the same.

JOHN D. GILLAND.

Sworn to and subscribed before me this 10th day of June, A. D. 1874.

{ SEAL U. S. CIR. COURT. }

LAZ. LINDSAY,
U. S. Com.

1770. 1770.

1 R. S. BUCK, EXECUTOR OF CHARLES L. Buck, dec'd, pltff.,
vs.
THE MANHATTAN LIFE-INSURANCE CO., OF New York, deft.

Pleas and proceedings had and done in the circuit court of the United States for the southern district Mississippi, at a term held according to law at the court-room in the city of Jackson, in said district, on the 1st Monday in May, A. D. 1874, the honorable R. A. Hill, district judge of the United States for Mississippi, present and presiding.

Be it remembered that heretofore, to wit, on the 5th day of May, A. D. 1873, the Manhattan Life-Insurance Company filed in the clerk's office of our said court a transcript from the circuit court of the county of Warren, in the State of Mississippi, in said district, which is in the words and figures following, to wit:

R. S. BUCK, EXECUTOR, &C.,
vs.
MANHATTAN LIFE-INSURANCE COMPANY, OF New York.

Pleas before the Hon. Geo. F. Brown, judge of the 15th judicial district of the State of Mississippi, in and for the county of Warren, at the court-house thereof, in the city of Vicksburg, on the 29th day of April, A. D. 1873.

2 Be it remembered that on the 19th day of February, A. D. 1873, the plaintiff, by his attorney, filed in the office of the clerk of the circuit court of Warren County, Mississippi, his declaration, which is in the words and figures as follows, to wit:

Declaration.

In circuit court of Warren County, Miss., to March term A. D. 1873.

R. S. BUCK, EXECUTOR OF CHAS. L. BUCK, dec'd,
vs.
MANHATTAN LIFE-INSURANCE CO.

R. S. Buck, executor of the last will and testament of Charles S. Buck, late of said county, deceased, plaintiff, brings this his action against

The Manhattan Life-Insurance Company, a company incorporated and chartered by the legislature of the State of New York, whose domicil is in said State, defendant. Said plaintiff avers that heretofore, to wit, on the 14th day of August, 1858, at the county aforesaid, in consideration of the sum of two hundred and sixty-five dollars paid said defendant by said Charles L. Buck in his life-time, and the said Charles L. Buck undertaking and agreeing to pay said defendant annually thereafter, on or before the day of the month last aforesaid during his life-time the like sum of two hundred and sixty-
3 five dollars, the said defendant made and delivered to the said Charles L. Buck its certain life-insurance policy numbered 5525, duly authenticated by its properly constituted officers; whereby, for the considerations aforesaid, said defendant assured the life of the said Charles L. Buck for the sum of ten thousand dollars for and during its term, commencing on the 14th day of August, 1858, as aforesaid, and thereby undertook and promised to pay to the legal representatives of said Charles L. Buck, ninety days after his death, and proof thereof made to said defendant, the aforesaid sum of ten thousand dollars, for which his life was assured by defendant as aforesaid. Plaintiff cannot file said policy of insurance as an exhibit to the petition, because the same was lost or destroyed during the late war between the States, and by diligent search and inquiry he has been unable to recover the same; but a copy of same is herewith filed, marked Exhibit A. Plaintiff further avers that during his life-time the said Charles L. Buck complied with all and singular the terms and conditions imposed upon him by the provisions of said policy of insurance; that on the 10th day of September, A. D. 1862, the said Charles L. Buck departed this life in Issaquena County, Mississippi, and on the 9th day of November, A. D. 1872, due proof of his decease was made to said defendant, as re-
4 quired by the terms and provisions of the policy aforesaid; but notwithstanding, and though often requested so to do, said defendant has wholly failed and refused to pay the said sum of ten thousand dollars or any part thereof. Whereupon plaintiff brings this suit for the sum of twenty thousand dollars, amount of principal and damages due in this behalf by said defendant, for which he prays judgment, &c.

HARRIS & GEORGE,
E. D. CLARK,
For Plffs.

(Endorsed:) Filed and summons issued 19th Feb., 1873. T. W. Cordozo, clk.

And the summons is in the words and figures as follows, to wit:

Summons.

THE STATE OF MISSISSIPPI,
Warren County:

To the sheriff of said county, greeting:

You are hereby commanded to summons the Manhattan Life-Insurance Company, if to be found in your county, to be and personally appear before the circuit court to be held at the court-house in and for the county of Warren on the fourth Monday of March next, to answer the complaint R. S. Buck, executor of the last will and testament of

Charles L. Buck, deceased, in a suit on life-insurance policy for
5 ten thousand dollars, ($10,000.)
And have then there this writ.

Witness my hand and seal of said court, at office in the city of Vicksburg, this 19th day of February, A. D. 1873.

[SEAL.] T. W. CARDOZO, *Clk.*

(Endorsed:) Received this 19th day of February, A. D. 1873. Chas. E. Furlong, sheriff.

And the sheriff's return is in the words and figures as follows, to wit:

Sheriff's return.

Executed the within writ this 19th day of February, A. D. 1873, by delivering a true copy of the same into the hands of Lazarus Lindsey and William A. Fairchild, each as agents of the within-named defendant, the Manhattan Life-Insurance Company, residing in Vicksburg, Mississippi; the said defendant being a foreign corporation chartered by the laws of the State of New York, and domiciled in said State of New York.

CHAS. E. FURLONG, *Sh'ff.*
CHAS. H. SMITH, *D. S.*

And the petition of the defendant is in the words and figures as follows, to wit:

6 *Petition.*

STATE OF MISSISSIPPI,
Warren County, ss:

March term, A. D. 1872.

To Hon. Geo. F. Brown, judge, &c.:

The petition of the Manhattan Life-Insurance Co., heretofore doing business through its agents, Laz. Lindsey and William A. Fairchild, in the State of Mississippi, shew that R. S. Buck, executor, &c., a citizen of Warren County, and State of Mississippi, and claiming to be executor of Charles S. Buck, deceased, who also resided in the State of Mississippi, has instituted this suit in the circuit court of said Warren County, which is now pending against the Manhattan Life-Insurance Company of New York, which said company is a corporation duly chartered under the laws of the State of New York, and having the principal office and residence in said State, and the stockholders of which reside in said State of New York and are citizens thereof, and that the matter in controversy exceeds five hundred dollars, exclusive of interest and costs, by their attorney in fact, William A. Fairchild, a resident of Vicksburg, Mississippi, upon whom process in this cause has been sued, and who now enters an appearance for said Manhattan Life-Insurance Co., claim that they are entitled to have said cause, under the act of Congress of the United States in such cases made and provided, transferred for trial
7 to the circuit court of the United States for the southern district of Mississippi to the next term thereof at Jackson, Miss., to be holden on the 2nd Monday in May, A. D. 1873, and they pray for an order making such transfer; and they offer as security that they will enter in said court at Jackson at said time their appearance,

and file therein on the first day of said term copies of the process and of all proceedings, depositions, testimony, and other proceedings in said cause affecting or concerning the defendants, the following persons: T. C. Bedford & W. B. Pittman.

W. A FAIRCHILD.

Sworn to and subscribed before me this 26th March, 1873.

T. W. CARDOZO, *Clk.*

(Endorsed:) Filed 26th March, 1873. T. W. Cardozo, clk.

And the bond for transfer is in the words and figures as follows, to wit:

Bond.

Know all men by these presents, that we, Manhattan Life-Insurance Co. as principal, and T. C. Bedford & W. B. Pittman are held and bound unto R. S. Buck, ex., in sum of five hundred dollars, for payment of which we bind ourselves, our heirs, &c., by these presents. Witness our hands and seals.

The condition of the obligation is as follows: The said R. S.
8 Buck aforesaid has brought a suit in the circuit court of said Warren County, Miss., in the March term, 1873, thereof, and which is now pending against said Manhattan Life-Insurance Company of New York, have filed their petition for the transfer and removal of the same to the next term of the circuit court of the United States for the southern district of Mississippi, to meet at Jackson on the first Monday of May, 1873.

Now, if said Manhattan Life-Insurance Co. of New York aforesaid shall enter their appearance and also file copies of the proofs, pleading, depositions, testimony, and proceedings in said circuit court of Warren County in the said United States court on the first day thereof, to wit, on the 1st Monday in May, then this obligation to be void; otherwise to remain in full force.

MANHATTAN LIFE-INS. CO. OF N. Y.
By WM. A. FAIRCHILD, [SEAL.]
Atty in Fact.
WM. B. PITTMAN. [SEAL.]
T. C. BEDFORD. [SEAL.]

(Endorsed:) Filed March 26th, 1873. T. W. Cardozo, clk.

And the order of transfer is in the words and figures as follows, to wit:

9 *Order of transfer.*

R. S. BUCK, EXER., &c.,
vs.
MANHATTAN LIFE-INSURANCE CO.

On motion of the defendant herein, supported by petition and accompanied by necessary bond, it is ordered by the court that this cause be, and the same is, transferred from the jurisdiction of this court to the jurisdiction of the circuit court of the United States for the southern district of Mississippi; and the clerk of this court is hereby ordered to make a certified transcript of the record of the case and forward same to the clerk of said United States circuit court, to be filed to ensuing May term

thereof, commencing Monday, 5th day of May, 1873, in pursuance of the act of Congress in such cases made and provided.

10 *Clerk's certificate.*

I, T. W. Cardozo, clerk of the circuit court of Warren County, State of Mississippi, hereby certify that the foregoing 10 pages of writing constitute a full and correct transcript of the records of the said case as the same now appears on file in my office.

Witness my hand and seal of office this 2nd day of May, A. D. 1873.

[SEAL.] T. W. CARDOZO,
Clerk.

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11 *Exhibit A to transcript.*

No. 5525. THE MANHATTAN LIFE-INSURANCE CO., OF NEW YORK.

This policy of insurance witnesseth: That the Manhattan Life-Insurance Company, in consideration of the sum of two hundred and sixty-five dollars and cents, to them in hand paid by Charles L. Buck, and of the sum of dollars and cents, to be paid on or before the days of next, and of the annual premium of two hundred and sixty-five dollars and cents, to be paid on or before the 14th day of August, , (or half or quarter yearly, in advance, with interest,) in every year during the continuance of this policy, do assure the life of Charles L. Buck, of Vicksburg, in the county of Warren, State of Mississippi, in the amount of ten thousand dollars, for the term of his natural life.

Annual premium, $265.00.

Sum insured, $10,000.

And the said company do hereby promise and agree, to and with the said assured, his executors, administrators, and assigns, well and truly to pay, or cause to be paid, the said sum insured to the said assured, his executors, administrators, or assigns, within ninety days after due notice and satisfactory evidence of the death of the said Charles L. Buck and proof of the just claim of the assured under this policy, deducting therefrom the amount of all unpaid notes given for
12 premiums or loans on this policy, and all deferred premiums, if any, then existing.

Provided, always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said Charles L. Buck shall, without the consent of this company previously obtained in writing, pass beyond the settled limits of the United States, the British provinces of the two Canadas, Nova Scotia, and New Brunswick, or shall, without such previous consent, visit those parts of the United States which lie west of the 23d degree of longitude west from Washington, or, between the 1st of July and the first of November, those parts which lie south of the southern boundaries of the States of Virginia, Kentucky,

Missouri, and Kansas, or shall enter upon a voyage on the high seas, or as a mariner, engineer, fireman, conductor, or laborer in any capacity upon service on any sea, sound, inlet, river, lake, or railroad, or in the manufacture or transportation of gunpowder or fire-works, or in submarine operations or mining, or into any military or naval service whatsoever, (the militia not in actual service excepted,) or in case he shall die by suicide, or by the hands of justice, or in, or in consequence of, a duel, or of the violation of any law of these States or of the United States, or of the said provinces, or of any other country which he may be permitted under this policy to visit or reside in, then this policy shall be null, void, and of no effect.

13 And it is also understood and agreed, by the within assured, to be the true intent and meaning hereof, that if the declaration made by or for the said Charles L. Buck in the application for this policy, or any part thereof, and bearing date the 7th day of August, 1858, and forming part of this contract, and upon the faith of which this policy is made, shall be found in any respect untrue, then, and in such case, this policy shall be null and void; or in case the said Charles L. Buck shall not pay the said premiums on or before the day hereinbefore mentioned for the payment thereof, then, and in every such case, the said company shall not be liable for the payment of the sum assured, or any part thereof, and this policy shall cease and determine.

And it is further agreed by the within assured that in every case where this policy shall cease, or become or be null and void, all previous payments made thereon to be forfeited to the said company, and that if assigned, written notice shall be given to this company. Not binding on the company until countersigned by L. Lindsey, esqr., of Vicksburg, Miss., and the advance premium paid.

In witness whereof the said The Manhattan Life-Insurance Company have hereunto affixed their corporate seal, and by their president and secretary signed and delivered this contract, at New York this 14th day of August, one thousand eight hundred and fifty-eight.

14 [SEAL.] N. D. MORGAN, *President.*
C. Y. WEMPLE, *Secretary.*

Own Life. Edition Aug., 1858.

Countersigned this day of August, 1858.
L. LINDSEY, *Agent.*

The premium on this policy is payable at the commencement of the risk in one annual payment. If the assured desire to pay semi-annually or quarterly, application must be made to the company in writing for permission, which the company will grant at its discretion. If the premium is payable semi-annually or quarterly, interest is chargeable on the deferred portion of the annual premium at the rate of seven per cent. The premiums are always due on the several days stipulated in the policy, and all risk to the company commences at the time of the actual payment of the first premium, without regard to the date of the policy, (unless otherwise stipulated in the policy,) and continues until the day named in the policy for the payment of the next premium, at 12 o'clock noon, and no longer.

No premium will be received by the company continuing any risk after the day named in the policy for the payment of such premium, unless the insured is in perfect health, and the risk continued at the entire option of the company; and no payment of premium is binding on the company unless the same is acknowledged by a printed receipt, signed by an officer of the company.

All receipts of the company at any time for premiums past due
15 are viewed by the parties in interest as acts of courtesy of the company, and in no case to be considered a precedent, or a waiver of the forfeiture of the policy, according to the conditions expressed therein.

N. B.—Persons insured who purpose making a sea-voyage should always notify the company of the name of the vessel and time of sailing, that the company may protect the interest of all concerned by re-insurance, if made necessary by too large amount of risk on any one vessel.

OFFICE OF MANHATTAN LIFE-INSURANCE CO.

In consideration of the extra premium of dollars, paid by , the receipt whereof for the first is hereby acknowledged, Charles L. Buck—insured under policy No. 5525 of this company, dated August 14th, 1858, for $10,000—hereby has permission, during the continuance of said policy, to reside and to travel in and to any part of the United States east of the 23rd degree of longitude west from Washington, at any season of the year, without extra charge; but he shall not be permitted to visit the city of New Orleans during seasons of epidemic.

Not binding until countersigned by L. Lindsey, esq., of Vicksburg, Miss., and the premium paid.

N. D. MORGAN, *President.*

C. Y. WEMPLE, *Secretary.*

Countersigned this day of August, 1858.

L. LINDSEY, *Agent.*

NEW YORK, *August* 14, 1858.

16 And afterwards, to wit, on the 17th day of October, 1873, the said defendant, by Wm. B. Pittman, attorney, filed in said cause his several pleas, in words and figures following, to wit:

Plea 1.

UNITED STATES OF AMERICA.

In U. S. circuit court for southern district of Mississippi.

R. S. BUCK, EX., &C.
vs.
MANHATTAN LIFE-INS. CO.

And the defendant comes, by his attorney, and defends the wrong and injury when, &c., and for plea says (actio non) that the plaintiff ought not to maintain his aforesaid action against said defendant; because, he says, that said Charles L. Buck did not on the day of August, A. D. 1861, before 12 o'clock noon, pay to said defendant three hundred dollars premium on said policy, as stipulated and agreed in said policy, nor did he pay said sum before said time; and that said policy of insurance, by the terms thereof, became, by reason of the non-payment of said premium by said C. L. Buck, forfeited, lapsed, ceased, and become null and void, and the premiums before that time paid became forfeit to said defendant; and this the defendant is ready to verify.

W. B. PITTMAN,
Atty. for Deft.

Filed Octo. 17, '73.

GEO. T. SWANN, *Clk.*

2nd plea.

17 UNITED STATES OF AMERICA.

In U. S. circuit court for southern district of Mississippi.

R. S. BUCK, EX., &C., }
vs.
MANHATTAN LIFE-INS. CO. }

By leave of the court, and for further plea, defendant says (actio non) that the plaintiff ought not to maintain his aforesaid action thereof against said defendant, because, he says, that said Charles L. Buck did not on the day of August, A. D. 1862, before 12 o'clock noon, pay to said defendant three hundred dollars premium on said policy, as stipulated and agreed in said policy, nor did he pay said sum before that date; and that said policy by its terms, by the non-payment of said premium by said C. L. Buck, lapsed, ceased, and became null and void, and the premium before that time became forfeited to said defendant; and this defendant is ready to verify, &c.

W. B. PITTMAN,
Atty. for Defendant.

Filed Octo. 17, 1873.

GEO. T. SWANN, *Clk.*

3rd plea.

And the defendant, for further plea in this behalf, says, (actio non,) because at the time of the alleged death of said C. L. Buck he
18 was a resident and citizen of the State of Mississippi, a State at that time at war with the Government of the United States, and defendant was a resident in the State of New York, which was one of the legal States of the United States, and, as a part of said United States, at war with the said State of Mississippi, and by reason thereof said plaintiff and defendant were at that time belligerents, and by virtue of said relations the contract of insurance between them before existing was suspended, and not in force at the time of the alleged death of said C. L. Buck.

W. B. PITTMAN,
Atty. for Defendant.

Filed Octo. 17, 1873.

GEO. T. SWANN, *Clk.*

And afterwards, to wit, on the 5th day of November, 1873, there was filed in said cause a paper-writing, of date "July 10, '73," signed by the plaintiff and defendant's attorney, as follows, viz:

In U. S. circuit court for southern district of Mississippi.

R. S. BUCK, EXER., &C., }
vs.
MANHATTAN LIFE-INS. CO. }

It is hereby agreed that plaintiff's declaration in this case may be amended so as to conform in point of fact to copy of policy on file; and

defendant may make such amendments in his transcript and file such pleas as he may deem necessary, provided no delay of trial is thereby occasioned.

19 R. S. BUCK, *for Himself.*
W. B. PITTMAN,
JULY 10th, 1873. *Atty. for Defendant.*

And afterwards, to wit, on the 27th day of January, A. D. 1874, being a day in the special term of our said court, held pursuant to law, on the 4th Monday in January, A. D. 1874, a plea, replication, and agreement of counsel in writing were filed in said cause, in words and figures following, to wit:

R. S. BUCK, EXER. OF C. L. BUCK,
vs.
THE MANHATTAN LIFE-INS. CO.

And the said defendant comes and defends the wrong and injury when, &c., and says, actio non, because the said defendant says that she did not undertake or promise in manner and form as the said plaintiff hath above hereof complained against her. And of this the defendant puts herself upon the country.

W. B. PITTMAN,
Atty. for Deft.

And plaintiff doth the like.

HARRIS & GEORGE,
Attys. for Pltff.

It is agreed that the defendant may introduce in evidence, under the above plea, all matters of legal defense, just as if the same had
20 been specially pleaded; and plaintiff may rebut such defense with out further pleading.

HARRIS & GEORGE,
Attys. for Plff.
W. B. PITTMAN,
Atty. for Deft.

And on the same day and year last aforesaid an agreement in writing and statement of Laz. Lindsey, and the endorsement thereon, were filed in said cause.

U. S. circuit court.

R. S. BUCK, EXER., &C.,
vs.
MANHATTAN LIFE-INS. CO.

It is hereby agreed between the plaintiff and defendant in the above-styled cause that the following shall constitute the facts upon which the same shall be tried:

1st. The sworn statement of Laz. Lindsey, heretofore agreed on and now in the papers of the case, is admitted in evidence; and further, that said Lindsey was the only accredited agent of said defendant, as he states, and the defendant's policy of insurance on the life of Chas. L. Buck, as described in the declaration, was duly authorized by the defendant, through their said agent, Laz. Lindsey; that copy of policy on

file in the papers of the cause is a true copy of original, (which was destroyed during the war, as averred in declaration,) issued to
21 said Buck by defendant.

2nd. That the insured, Charles L. Buck, paid to the defendant the required premiums on said policy of insurance each year up to August, 1861, when the premium for that year matured, and the premium for that year was tendered, but not paid, for the reason explained by said Lindsey in his statement.

3rd. The said Charles L. Buck died in Issaquena County, Mississippi, of hemorrhage of the bowels, September 10th, 1862; that he was at the time in no way connected with the confederate army or navy, and had not been, but was and had been a member of the State senate of Mississippi for some four years; that proof of death was made the defendant, as required by the policy, in October, 1872.

4th. That said Charles L. Buck was a citizen and resident of the State of Mississippi for many years before and during the civil war up to the date of his death, and had not been out of the State of Mississippi from the commencement of the war to the date of his death.

5th. That R. S. Buck, the plaintiff in this suit, was, at the date of its institution, and is now, the legally qualified and sole executor of the estate of said Charles L. Buck, decd. The annual premium for August, 1862, was not tendered because the premium for 1861 had not been accepted, (as explained by Laz. Lindsey, agent of co., in his statement.)

22 It is also agreed that defendant may file a statement of the account of said C. L. Buck with said defendant, shewing amount of premiums paid, the amount due said defendant at time of said C. L. Buck's death; and statement shall be taken as a part of the facts agreed upon in this cause.

W. B. PITTMAN,
Atty. for Deft.
HARRIS & GEORGE,
For Plff.

VICKSBURG, MISS., *Nov.* 26, '73.

I was the duly authorized agent of the Manhattan Life-Insurance Co. of New York, in the city of Vicksburg, Miss., in the year 1861, in which company Chas. L. Buck, dec'd, held a policy on his life for ten thousand dollars. Mr. Buck paid his yearly premiums promptly up to the summer of 1861, and the' proffered and tendered the amount to me as agent of said life-ins. co., which I declined to receive, as I could not remit to the co. in New York in consequence of the civil war then existing, and in consequence of a law of the Confederate States congress I was required, under a penalty, to pay over the amount to a commissioner of said Confederate States of all such receipts. I consulted several leading atto's, in order to protect the co. as well as the policy-holder, and was advised to refuse to receive the premiums, and if in any instance I had done so, to return the amounts to the parties and keep a memo. of the fact; which I did do. My memo. was lost with the papers of my office when this city was captured in July, 1863.

23 LAZ. LINDSEY.

Sworn to and subscribed before me this 26th Nov., 1873.
H. M. MARTIN, [SEAL.]
U. S. Commissioner.

U. S. cir. court.

R. S. BUCK, EX., &C.,
vs.
MANHATTAN LIFE-INS. CO.

Upon the part of defendant in this case it is agreed that the within statement of L. Lindsey may be read in evidence in said case, upon its trial, on behalf of plaintiff.

W. B. PITTMAN,
Atty. for Deft.

And on the 28th day of May, A. D. 1874, the same being a day in the regular May term, 1874, of our said circuit court, the following proceedings were had therein, to wit:

R. S. BUCK, EXE'R, &C.,
vs.
MANHATTAN INSURANCE CO.

This day came the defendant, by attorney, and withdraws all his pleas heretofore pleaded, except the general issue, filed on 27 Jan'y, 1874, under which, and the agreement thereto annexed, the cause is tried.

BUCK, EX., &C.,
vs.
MANHATTAN LIFE INSU.

24 We waive a jury trial in the above case, and agree that the court shall try the cause on the law and facts.

HARRIS & GEORGE,
Atty. for Plaintiff.
W. B. PITTMAN,
Atty. for Defendant.

Filed May 28, 1874.

GEO. T. SWANN, *Clk.*

Whereupon, on the day and year last aforesaid, judgment was rendered therein in words and figures following, to wit:

R. S. BUCK, EXOR. OF C. L. BUCK,
vs.
THE MANHATTAN LIFE-INSU. CO.

This day came the parties, by their attorneys, and waive a jury trial, and agree that the cause shall be tried by the court upon the law and facts; and thereupon the agreed state of facts, signed by counsel, together with a copy of the policy sued on, and statement of Laz. Lindsey, which were made a part of the agreed state of facts aforesaid, were read in evidence, and the court found the facts accordingly; and thereupon finds the issue for the plaintiff, and that the sum of ten thousand dollars is due to said plaintiff from the said defendant on the policy aforesaid.

It is therefore considered by the court that the plaintiff do have and

recover of and from the defendant the said sum of ten thousand
25 dollars, and also the costs of this suit, to be taxed by the clerk, &c.

And on the 30th day of May, A. D. 1874, being a day in the term last aforesaid, an order was made and entered herein as follows, to wit:

R. S. BUCK, EXECUTOR, &C., }
vs. } 1770
MANHATTAN LIFE-INS. CO. }

By agreement of counsel it is ordered that the defendant be allowed thirty days in which to file his bill of exceptions, which may signed by the judge as of this term, and so filed, and to sue out his writ of error, give his bond, &c., and that in the mean time no execution issue.

26 And thereupon a bill of exceptions was signed, sealed, and allowed as follows, to wit:

In the circuit court of the United States for the southern district of Mississippi. To May term, A. D. 1874.

R. S. BUCK, EXECUTOR OF CHARLES L. BUCK, }
deceased, } *ss.*
vs. }
THE MANHATTAN LIFE-INSURANCE COMPANY. }

Be it remembered that on the trial of the above-entitled cause, at Jackson, Mississippi, the honorable Robert A. Hill presiding, the following proceedings were had: The case was submitted to the court on issues of fact and law under and by virtue of the stipulation, in writing, filed with the clerk of said court, in words and figures as follows:

BUCK, EX. }
v. }
MANHATTAN LIFE-INS. CO. }

We waive a jury trial in the above case, and agree that the court shall try the cause on the law and facts.

HARRIS & GEORGE,
Attys. for Plff.
W. B. PITTMAN,
Atty. for Deft.

(Endorsed:) Filed May 28, 1874. Geo. T. Swann, clk.

27 And upon the following writings and documentary evidence: 1st. An agreement in words and figures as follows:

U. S. cir. court.

R. S. BUCK, EX'C'R, }
vs. }
MANHATTAN LIFE-INS. CO. }

It is hereby agreed between the plaintiff and defendant in the above-styled cause that the following shall constitute the facts upon which the same shall be tried:

1st. The sworn statement of Laz. Lindsey, heretofore agreed on and now in the papers of the case, is admitted in evidence; and further, that said Lindsey was the duly accredited agent of said defendant, as he states, and the deft.'s policy of assurance on the life of Chas. L. Buck, as described in the declaration, was duly authorized by the defendant through their said agent, Laz. Lindsey; that copy of policy on file in the papers of the cause is a true copy of original (which was destroyed during the war, as averred in declaration) issued to said Buck by defendant.

2nd. That the insured, Charles L. Buck, paid to the defendant the required premiums on said policy of insurance each year up to August, 1861, when the premium for that year matured, and the premium for that year was tendered, but not paid for the reason explained by said Lindsey in his statement.

28 3rd. That said Charles L. Buck died in Issaquena County, Mississippi, of hemorrhage of the bowels, September 10th, 1862; that he was at the time in no way connected with the confederate army or navy, and had not been, but was and had been a member of the State senate of Mississippi for some four years; that proof of death was made the defendant, as required by the policy, in October, 1872.

4th. That said Charles L. Buck was a citizen and resident of the State of Mississippi for many years before and during the civil war up to the date of his death, and had not been out of the State of Mississippi from the commencement of the war to the date of his death.

5th. That R. S. Buck, the plaintiff in this suit, was at the date of its institution, and is now, the legally qualified and sole executor of the estate of said Chas. L. Buck, dec'd.

The annual premium for August, 1862, was not tendered because the premium for 1861 had not been accepted, as explained by Laz. Lindsey, agent of co., in his statement.

It is also agreed that defendant may file a statement of the account of said C. L. Buck with said defendant, shewing amount of premiums paid, the amount due said defendant at time of said C. L. Buck's death, and statement shall be taken as a part of the facts agreed upon in this cause.

W. B. PITTMAN,
Atty. for Defendant.
HARRIS & GEORGE,
For Plff.

29 (Endorsed:) Filed Jan'y 27, '74. Geo. T. Swann, clk.

And 2nd. A written statement of facts signed by Laz. Lindsey, which was admitted as the testimony of said witness as if formerly taken by deposition, in words and figures as follows:

VICKSBURG, MISS., *Nov.* 26, '73.

I was the duly authorised agent of the Manhattan Life Ins. Co. of New York, in the city of Vicksburg, Miss., in the year 1861, in which company Chas. L. Buck, dec'd, held a policy on his life for ten thousand dollars. Mr. Buck paid his yearly premiums promptly up to the summer of 1861, and then proffered and tendered the amount to me as agent of said life ins. co., which I declined to receive, as I could not remit to the co. in New York in consequence of the civil war then existing, and in consequence of a law of the Confederate States congress I was required, under a penalty, to pay over the amount to a commissioner of said Confeder-

ate States of all such receipts. I consulted several leading atto's, in order to protect the co. as well as the policy-holders, and was advised to refuse to receive the premium, and if in any instance I had done so, to return the amounts to the parties and keep a memo. of the fact; which I did do. My memo. was lost with the papers of my office when this city was captured in July, 1863.

30 LAZ. LINDSEY.

Sworn to & subscribed before me this 26th Nov., 1873.

H. M. MARTIN, [SEAL.]
U. S. Commissioner.

U. S. cir. court.

R. S. BUCK, EXCR., &C.,
vs.
MANHATTAN LIFE-INS. CO.

Upon the part of defendant in this case it is agreed that the within statement of L. Lindsey may be read in evidence in said case, upon its trial, on behalf of plff.

W. B. PITTMAN,
Atty. for Deft.

(Endorsed:) Filed Jan'y 27, '74. Geo. T. Swann, clk.

And 3rd. A copy of the policy sued on, which was admitted as and for the original, alleged to be lost, which was in words and figures as follows:

No. 5525. THE MANHATTAN LIFE-INSURANCE CO. OF NEW YORK.

Annual premium, 265.00. This policy of insurance witnesseth that the Manhattan Life-Insurance Company, in consideration of the sum of two hundred & sixty-five dollars and cents, to them in hand paid by Charles L. Buck, and of the sum of dollars and cents, to be paid on or before the days of next, and of the annual premium of two hundred and sixty-five dollars and cents, to be
31 paid on or before the 14th day of August (or half or quarter yearly, in advance, with interest) in every year during the continuance of this policy, do assure the life of Charles L. Buck, of Vicksburg, in the
Sum insured, $10,000. county of Warren, State of Mississippi, in the amount of ten thousand dollars for the term of his natural life.

And the said company do hereby promise and agree, to and with the said assured, his executors, administrators, and assigns, well and truly to pay, or cause to be paid, the said sum insured to the said assured, his executors, administrators, or assigns, within ninety days after due notice and satisfactory evidence of the death of the said Charles L. Buck, and proof of the just claim of the assured under this policy, deducting therefrom the amount of all unpaid notes given for premiums or loans on this policy, and all deferred premiums, if any, then existing: Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions: That in case the said Charles L. Buck shall, without the consent of this company, previously obtained in writing, pass beyond the settled limits of the United States, the British provinces of the two Canadas, Nova Scotia, and New Brunswick, or shall, without such previous consent, visit those parts of the United

States which lie west of the 23rd degree of longitude west from Washington, or, between the 1st of July and the 1st of November, those parts which lie south of the southern boundaries of the States
32 of Virginia, Kentucky, Missouri, and Kansas, or shall enter upon a voyage on the high seas, or, as a mariner, engineer, fireman, conductor, or laborer in any capacity, upon service on any sea, sound, inlet, river, lake, or railroad, or in the manufacture or transportation of gunpowder or fireworks, or in submarine operations, or mining, or into any military or naval service whatsoever, (the militia not in actual service excepted,) or in case he shall die by suicide or by the hands of justice, or in, or in consequence of, a duel, or of the violation of any law of these States, or of the United States, or of the said provinces, or of any other country which he may be permitted under this policy to visit or reside in, then this policy shall be null, void, and of no effect.

And it is also understood and agreed by the within assured to be the true intent and meaning hereof that if the declaration made by or for the said Charles L. Buck in the application for this policy, or any part thereof, and bearing date the 7th day of August, 1858, and forming part of this contract, and upon the faith of which this policy is made, shall be found in any respect untrue, then, and in such case, this policy shall be null and void; or in case the said Charles L. Buck shall not pay the said premiums on or before the day hereinbefore mentioned for the payment thereof, then, and in every such case, the said company shall not be liable for the payment of the sum assured, or any part thereof, and this policy shall cease and determine.

33 And it is further agreed by the within assured that in every case where this policy shall cease, or become or be null or void, all previous payments made thereon shall be forfeited to the said company, and that, if assigned, written notice shall be given to this company, not binding on the company until countersigned by L. Lindsey, esq., of Vicksburg, Miss., and the advance premium paid.

In witness whereof the said The Manhattan Life-Insurance Company have hereunto affixed their corporate seal, and by their president and secretary signed and delivered this contract, at New York, this 14th day of August, one thousand eight hundred and fifty-eight.

[L. S.] N. D. MORGAN,
President.

C. T. WEMPLE,
Secretary.

Own life. Aug., 1858. Edition Countersigned this day of August, 1858.
L. LINDSEY, *Agent.*

On the back of said policy is the following:

The premium on this policy is payable at the commencement of the risk, in one annual payment. If the assured desire to pay semi-annually or quarterly, application must be made to the company in writing for permission, which the company will grant at its discretion. If the
34 premium is payable semi-annually or quarterly, interest is chargeable on the deferred portion of the annual premium, at the rate of seven per cent. The premiums are always due on the several days stipulated in the policy; and all risk to the company commences at the time of the actual payment of the first premium, without regard to the date of the policy, (unless otherwise stipulated in the policy,) and continues until the day named in the policy for the payment of the next premium, at 12 o'clock noon, and no longer.

No premium will be received by the company, continuing any risk,

after the day named in the policy for the payment of such premium, unless the insured is in perfect health, and the risk continued at the entire option of the company; and no payment of premium is binding on the company unless the same is acknowledged by a printed receipt, signed by an officer of the company.

All receipts of the company at any time for premiums past due are viewed by the parties in interest as acts of courtesy of the company, and in no case to be considered a precedent, or a waiver of the forfeiture of the policy, according to the conditions expressed therein.

N. B.—Persons insured who purpose making a sea voyage should always notify the company of the name of the vessel and time of sailing, that the company may protect the interest of all concerned, by reinsurance, if made necessary by too large amount of risk on any one vessel.

35 And attached to said policy is the following:

OFFICE OF MANHATTAN LIFE-INSURANCE CO.

In consideration of the extra premium of dollars, paid by , the receipt whereof for the first is hereby acknowledged, Charles L. Buck, insured under policy No. 5525 of this company, dated August 14th, 1858, for $10,000, hereby has permission, during the continuance of said policy, to reside and to travel in and to any part of the United States east of the 23d degree of longitude west from Washington, at any season of the year, without extra charge; but he shall not be permitted to visit the city of New Orleans during seasons of epidemic.

Not binding until countersigned by L. Lindsey, esq., of Vicksburg, Miss., and the premium paid.

N. D. MORGAN,
President.

C. T. WEMPLE,
Secretary.

Countersigned this day of August, 1858.

L. LINDSEY, *Agt.*

NEW YORK, *August 14th*, 1858.

(Endorsed:) Exhibit A. Copy of original. Filed Nov. 5, '73. Geo. T. Swann, Clk.

36 The foregoing was all the evidence which was introduced at the trial of said case, and none other was before the court. Thereupon the court made the following special finding upon the issues of fact upon the evidence hereinbefore set forth:

First. That defendant insured the life of the said Charles L. Buck, deceased, on the 14th day of August, 1858, by a written policy of insurance, duly executed, in the words and figures in the copy of said policy introduced in evidence and copied in the bill of exceptions.

Second. That the insured, Charles L. Buck, paid to the defendant the required premiums on said policy which became due before August, 1861; that the said deceased tendered to Laz. Lindsey, on the day the premium fell due, as the agent of the defendant, the full amount of the premium which was then due; that said Laz. Lindsey was the duly-authorised agent of the defendant at the commencement of the late civil war, which was raging at the time of the tender, and said agency had not been revoked or annulled by any act of the defendant or said agent; that there was no other agent of the company in the State at the

time the premium fell due in 1862; that said Laz. Lindsey declined to receive the amount so tendered, induced to that course by the reasons set forth in his statement introduced in evidence and copied in the bill of exceptions.

Third. That said Charles L. Buck, deceased, did not pay or tender the premium of two hundred and sixty-five dollars which became
37 due August 14th, 1862, or any other sum on account thereof, to the defendant, or to any agent or person whatsoever for the defendant, at or before the same became due by the terms of said policy, nor at any time thereafter, because the premium of 1861 had not been accepted, as explained by Laz. Lindsey, agent of company, in his statement hereinbefore set forth.

Fourth. That said Charles L. Buck died in Issaquena County, Mississippi, of hemorrhage of the bowels, September 10th, 1862; that he was at the time in no way connected with the confederate army or navy, and had not been, but was and had been a member of the senate of the State of Mississippi for some four years.

Fifth. That proof of death of the insured, Charles L. Buck, was made to the defendant, as required by the policy, in the month of October, 1872.

Sixth. That said Charles L. Buck was a citizen and resident of the State of Mississippi for many years before and during the civil war up to the date of his death, and had not been out of the State of Mississippi from the commencement of the war to the date of his death.

Seventh. That R. S. Buck, the plaintiff in the suit, was, at the date of its institution, and now is, the sole executor of Charles L. Buck, deceased, and, as such, the lawfully-constituted representative of his estate.

38 And the court thereupon, and upon the facts so found, and upon none other, rendered the judgment as appears of record. The defendant excepted to the finding of the facts by the court upon the evidence, and also excepted to the judgment as rendered, and now tenders this his bill of exceptions, and prays that the same may be signed and sealed; which is accordingly now done, in term time, this 28th day of May, A. D. 1874.

R. A. HILL, [L. S.]
United States District Judge for Mississippi, before whom said cause was tried.

I agree that the above is correct.

J. Z. GEORGE,
For Plff.

And afterwards, to wit, the said defendants, on the 6th day of June, A. D. 1874, filed in the clerk's office of said court their petition for writ of error herein, in words and figures following, to wit:

To George T. Swann, esqr., clerk circuit court of the United States for the southern district of Mississippi:

The undersigned, the Manhattan Life-Insurance Company, feels
39 aggrieved by a judgment rendered at the May term, 1874, of the circuit court of the United States for the southern district of Mississippi, in a certain cause wherein R. S. Buck, as executor of Charles L. Buck, dec'd, was plaintiff, and the said Manhattan Life-Insurance Company was defendant: wherefore said company defendant

aforesaid prays that a writ of error, to operate as a supercedeas, may issue, returnable to the next term of the Supreme Court of the United States, to be held on the Monday of October, A. D. 1874, at Washington, upon giving bond as required by law.

THE MANHATTAN LIFE-INSURANCE COMPANY,
By W. B. PITTMAN,
Attorney of Record.

Filed June 6th, 1874.

GEO. T. SWANN, *Clk.*

Whereupon there was issued, pursuant thereto, a writ of error, in words and figures following, viz: (See writ of error attached in front of this transcript, and numbered page 40.)

41 And on the 8th day of June, A. D. 1874, defendants filed their writ of error bond as follows, to wit:

Supreme Court of the United States.

R. S. BUCK, EXECUTOR OF CHARLES L. BUCK, deceased, *vs.* THE MANHATTAN LIFE-INSURANCE COMPANY. } No.

Know all men by these presents that we, the Manhattan Life-Insurance Company, and George M. Klein, cashier, and William A. Fairchild, are held and firmly bound unto R. S. Buck, executor of Charles L. Buck, deceased, in the sum of fifteen thousand dollars, to be paid to the said R. S. Buck, executor, &c., his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this fourth day of June, A. D. one thousand eight hundred and seventy-four.

Whereas the above-named The Manhattan Life-Insurance Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the southern district of Mississippi: Now, therefore, the condition of this obligation is such that if the above-named The Manhattan Life-Insurance Co. shall prosecute his said writ of error to effect, and answer all damages and costs
42 if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE MANHATTAN LIFE-INSURANCE CO. OF NEW YORK, [SEAL.]
By WILLIAM B. PITTMAN, [SEAL.]
Atty. in fact.
GEORGE M. KLEIN. [SEAL.]
WILLIAM A. FAIRCHILD. [SEAL.]

Sealed and delivered in presence of—& securities approved—
LAZ. LINDSAY,
U. S. Co.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

Personally appeared before the undersigned, commissioner of the circuit court of the United States for the southern district of Mississippi,

The Manhattan Life-Insurance Company, by William B. Pittman, their atttorney in fact, and George M. Klein, cashier, and William A. Fairchild, to me personally known, and acknowledged that they signed, sealed, and delivered the foregoing bond on the day of the date thereof, as their voluntary act and deed, for the purposes therein mentioned.

Given under my hand and seal this 4th day of June, A. D. 1874.

[L. S.] LAZ. LINDSAY,
U. S. Comr.

43 The foregoing bond and sureties are approved.
This 8th day of June, 1874.

R. A. HILL,
Judge, &c.

UNITED STATES OF AMERICA,
Southern District of Mississippi, sc:

I, George T. Swann, clerk of the circuit court of the United States for the southern district of Mississippi, hereby certify that the above and preceding annexed forty-two (42) pages contain a full, true, and complete transcript of the record in a certain cause lately pending and determined in said court, wherein R. S. Buck, executor, &c., of Charles L. Buck, dec'd, was plaintiff, and The Manhattan Life-Insurance Company of New York defendant, as the same remains of record in our said court, together with a true copy of the writ of error bond filed therein, as the same therein remains on file.

In testimony whereof I have hereto set my name and affixed the seal of said circuit court at office in Jackson, in said district, this 30th day of July, A. D. 1874.

[SEAL.] GEO. T. SWANN,
Clerk Cir. Ct. U. S., So. Dist. Miss.

Rec'd of Messrs. Pittman & Pittman, fourteen dollars 25 cents, in full fees for transcript, Aug. 15th, '74.

GEO. T. SWANN, *Clk.*

(Indorsement on cover:) No. 391. The Manhattan Life-Insurance Company, plaintiff in error, vs. R. S. Buck, exor. Charles L. Buck, dec'd. S. Mississippi C. C. U. S. Filed 17th October, 1875.

Supreme Court United States.

OCTOBER TERM, 1874.

THE MANHATTAN LIFE INSURANCE COMPANY, Plaintiff in Error,

v.

R. S. BUCK as executor of CHAS. L. BUCK, deceased, Defendant in Error.

Argument of Pittman & Pittman,

For Plaintiff in Error.

S. & R. O. Polkinhorn, Printers, Washington, D. C.

Supreme Court United States.

OCTOBER TERM, 1874.

THE MANHATTAN LIFE INSURANCE COMPANY, Plaintiff in Error,

v.

R. S. BUCK as executor of CHAS. L. BUCK, deceased, Defendant in Error.

Argument of Pittman & Pittman,

For Plaintiff in Error.

FACTS.

The facts upon which the judgment was rendered are, substantially as follows: Charles L. Buck, who was a resident citizen of the State of Mississippi, did, in his lifetime, viz: on the 14th day of August, 1858 procure a policy of insurance upon his life for the sum of $10,000, from the plaintiff in error, a corporation chartered by and having its home office in the State of New York. The policy was issued from the office in New York, and transmitted through their then local agent, Laz. Lindsay, Esq., at Vicksburg, Mississippi, through whom the application had been made. The annual premium, required during the continuance of the policy, was payable on the 14th day of August, in the sum of $265.00. Among other things, it was provided in the policy that, "in case the said Charles L. Buck shall not pay the

" said premiums on or before the day hereinbefore men-
" tioned for the payment thereof, then and in every such
" case the said company shall not be liable for the pay-
" ment of the sum assured, or any part thereof, and this
" policy shall cease and determine." The last premium paid was that which became due August 14, 1860. The agent mentioned continued to act as such until communication with the company was prevented by the state of hostilities which supervened in 1861. On the 14th of August, 1861, the deceased tendered the annual premium, required to be paid upon that day in renewal of the policy, to the said Laz. Lindsay, which was refused, because, in the language of the agent, " he could not remit to the company in New York, in consequence of the civil war then existing, and in consequence of a law of the Confederate States' Congress, he was required under a penalty to pay over the amount of all such receipts to a commissioner of said Confederate States." The deceased did not pay or tender the annual premium or any part thereof which was required to be paid on or before 14th day of August, 1862. The deceased was never in the military or naval service of the Confederate States, but was a member of the legislature of Mississippi, during the war. He died in Issaquena County, in said State, September 10th, 1862. The proof of death was made in October, 1872.

The foregoing facts were embodied in a written statement agreed upon as the facts, and submitted under a written agreement, that all legal defenses might be proven and should avail without special pleas.

The court made a special finding in accordance with the facts above stated, and thereupon rendered judgment for the plaintiff.

ASSIGNMENT OF ERRORS.

It is submitted, upon the part of the plaintiff in error, that the court erred in the application of the law to the facts as found by the court, and as stated in the bill of exceptions.

It is insisted that the court erred in the rendition of the judgment for the plaintiff, and that it should have been rendered for the defendant for the reason stated in the argument herewith submitted.

ARGUMENT.

The defense of the Insurance Companies in cases similar to this one has been characterized as inequitable. It has been regarded erroneously, as we conceive, an effort to insist upon a "*forfeiture*," by which it has been supposed the companies have sought to escape just liabilities. When they have insisted upon the letter of their contract their defense has been criticised as illiberal. It has been urged that the retention by them of premiums in arrears with interest will compensate them. A singularly insufficient response has been in some instances made for the companies to the effect that they had a right to *money at the time*, so they might make profitable investments. If this were the best answer that could be made, it must be conceded that the criticisms would be just. We do confidently believe, however, that those who have supposed that the retention of unpaid premiums and interest is full and just compensation, have made a very grave mistake in their calculations susceptible of demonstration.

Others have urged in behalf of the companies, with much zeal,—nay, with much of the spirit of those unhappy times which gave rise to those questions, that the war dissolved these policies as contravening public pol-

icy in nerving the arms of "*rebels.*" It is such arguments, as we conceive, which have placed the companies in a false attitude, and brought upon them unmerited animadversion. That the judgment in this case and similar judgments are grossly *inequitable*, without regard to any technical defense, is, in our opinion, capable of being clearly shown.

Disregarding natural order, therefore, by deferring the consideration of other questions, we shall proceed at once to discuss the law touching the merits of the case.

The common law, which has for so long a time challenged the admiration of the learned and the just, was said by our great American Commentator to be the "application of the dictates of natural justice and cultivated reason to particular cases." The correct application of the principles of the unwritten law "to the particular case," presented in this and similar records, has met with a diversity of adjudication, in state and federal courts, and indeed in this court, which attests the difficulty attending its solution. It is no matter of just surprise that social and commercial progress should constantly give rise to new and unthought of emergencies, and that every decade should present to the tribunals novel questions in the application of settled principles to "particular cases. The learned court, which brings to the performance of this important task a knowledge of legal principles only, and omits to obtain a thorough comprehension of the new relation created between the litigants by the new character of contract, or the novel conditions surrounding them, fails in a most essential particular.

In this respect, it is submitted, the learned judge who tried this case, and several other courts of merited renown, have failed most signally in their application of conceded principles to questions arising under contracts of Life Insurance. Elaborate and able discussions relative to international law, and relative to the effect of war

upon agency, and upon the several distinct classes of contracts, have been resorted to by learned judges, who, really concurring upon these principles of the law, have, nevertheless, attained opposite conclusions. Confidently believing that it is attributable to the cause above indicated, we shall first invite attention to the "policy" upon which the action is founded. There is no rule more safe and just in seeking the construction of a contract, than that which enjoins, "as soon as we certainly know the reason, which alone has determined the will of him who speaks, we ought to interpret his words, and to apply them in a manner suitable to that reason alone." *Vattel's Rules.*

What, then, is the scheme of Life Insurance? It is based upon the accurate knowledge of the duration of human life from any given age, afforded by the law of average estimate on the one hand, and the absolute ignorance of its duration in any individual case dependent on the laws of chance, on the other hand.

The hopeless uncertainty of the latter is compensated for by the accuracy of the former. These great institutions have found the means of applying the compensation by a system of mathematical calculations. These accomplished, their contracts or policies are carefully adapted to them, and based upon them. Any judge, therefore, who is either ignorant or regardless of these fundamental principles of the scheme which the contract is designed to carry out, leaves out of his consideration an element which would insure a just judgment, and resorts alone to the inevitably uncertain means of technical construction of phraseology.

The judgment in this case, and all of the precedent and associate judgments analogous thereto, proceed exclusively upon the idea: 1st, that the company escapes a liability actually incurred by insisting upon a *forfeiture;* 2d, that relief from the supposed forfeiture upon the

condition that premiums in arrear with interest shall be paid, will be equitable. A simple illustration of the process by which premiums are calculated will show the fallacy of their premise. It will show that their mode of affording compensation not only is grossly inadequate in its result, but is based upon an error, which, though difficult to understand by a mere inspection of the contract, becomes patent by the illustration which we propose.

Quite a number of the judges and counsel advocating the cause of the Insurance Companies, have strangely insisted that the retention of the premium in arrear with interest, was inadequate compensation to the company, *because* the company had a right to the money, and might have realized more than interest by profitable investment. Such arguments are justly criticised and disregarded. They tend to make a strong cause appear weak. The inadequacy is not in the *interest*, but in the *principal*, as we shall now show.

As losses are to be paid from premiums, it is evident that the latter must be at least equal to the former. Omitting the consideration of expenses, and everything except interest and *chance*, the process which we shall illustrate, will show the principle. The mortality table begins with 100,000 lives at the age of 10 years. The first year 676 will die; 674 the next year, decreasing for five years, and then increasing until the last shall have passed away. At the age of thirty, 86,292 survive, and at the age of thirty one, 85,565. Thus 727 out of 86,292 die between the ages of thirty and thirty-one. Now we will suppose that each one of the 86,292 persons desire to be insured for the sum of $1,000. As 727 of them only will die, it will require only $727,000 to pay the loss at the end of the year. As the premiums are paid in advance, and interest will be realized, say at 4 per cent., the aggregate premiums must be such a sum as, at that interest, will produce the required $727,000—that is $\frac{100}{104}$ x

727,000 = $699,038.46, which the company must receive paid *in advance*. Every individual of the 86,292 persons must pay their *pro rata* in advance. Each then must pay $\frac{699,038.46}{86,292} = \$8.10$, the required premium. We will now suppose that the survivors of the 100,000 persons had insured their lives for the term of three years, at the age of twenty-nine, for $1,000 each upon annual premium of $8.10. The number at the beginning would be 87,012 of whom 720 would have died by the day upon which the next annual premium becomes payable. War supervenes before the second premium is paid and continues until the expiration of the second year. Now, according to the opinion of these learned courts, these 86,292 policy holders surviving at the beginning of the year are *excused*" by the war from paying their premiums during the continuance of the war. When the war ceases at the expiration of the second year, 727 of the policy holders will be dead. It is no mere *chance* which the company *may* escape; it is certainty based on the uniform operation of the laws of nature: and when we say *will be*, we are justified by the same character of reasoning which authorized the prediction of the hour of the morrows' sunrise. The personal representatives of the 727 dead call for their $1,000 each, less $8.10 premium in arrear. The loss must inevitably be $727,000 less $8.10 x 727, which is $588.87, deducted, leaves the loss of the company exactly $726,411.13. The policy holders who had not died would, of course, elect to forfeit their policies, as we shall presently show.

There is one element which we have omitted in the foregoing, for the purpose of simplyfying that illustration, and with the view, also, of giving separate attention to the latter, because several of the opinions lay great stress on it. The premium of $8.10 is an accurate calculation upon the *average* loss of 727 per annum during the three years—720 the first year, 727 the second, and 734

the third. It will be thus observed that the company has a *reserve* of seven premiums—that is, $8.10 x 7= 56.80, with one year's interest at the beginning of the second year; so the actual loss of $726,411.13 would be reduced by that amount. Now, if the war had continued for the entire term, the deaths during the next year would be 734, which would make the loss for the two years exactly $726,411\frac{13}{100}$ x 2=$1,452,822.26.

Where there is so great loss to one party there must be proportionate gain to the other, if the figures are correct. We find that this too, is susceptible of demonstration. It may be said that seven hundred and twenty-seven policy holders gain $1,000 each, less their premiums of $8.10. That would not be so manifest however, or would not illustrate the gain to the policy holders, because, in one sense, that would be the result if all had paid. The exact advantage in dollars and cents which is given to the policy holders can be most clearly seen in this way:—The insured 86,292, pay each $8.10, amounting to $699,038.46, which with interest will amount to $727.000, in consideration that that sum shall be repaid, $1,000 each to the seven hundred and twenty-seven of them who shall die. The contract is exactly equal and fair. *Every* policy holder gets the *exact* benefit of his premium in the *chance* of receiving the $1,000. Those who survive are not to be regarded as losers by reason of their contract—their loss is by the uncertainty of life. It is true that human life cannot be measured by pecuniary compensation, except by arbitrary convention. In the case supposed each valued his life at $1,000. He was liable to lose it upon that valuation the *danger or chance* of the loss amounted to $8.10 per annum to each. They all escaped that danger, viz., the danger of dying without receiving $1,000 by purchasing the insurance. Those who die received the $1,000. The company in such case, neither makes nor loses. From this it is evident

that if the premiums are not paid the entire policy holders have been insured for the premiums of the seven hundred and twenty-seven, which the company is generously permitted to retain and pay to itself.

For the purpose of making the illustration more patent we will use round numbers, making the calculation upon the same mathematical principle. An Insurance Company issues one thousand policies for $10,000, at an annual premium of $200 each. If one hundred of them shall have died at the end of five years it will require one million of dollars to pay the premiums. The aggregate premiums 200 x 5 x 1,000, will be just equal to the loss, and they can be paid in accordance with the scheme of the institution and the contract with the individual. But we will now suppose that one-half, say five hundred, of the policy holders are within hostile lines for a period of five years. The contracts with these are "*suspended*" during that time, according to the judgments which we are now criticising. They are "*excused*" from the payment of their premiums during that time. After the war we find fifty of the five hundred have died. It will require exactly one half million to pay their policies. The representatives of these dead call for their $10,000 each, offering to suffer a reduction to the amount of premiums in arrear, that is $200 x 5=$1,000, which will amount in the aggregate to $50,000. This leaves $450,000 to be paid by the company—that is by the five hundred policy holders who remained in the country of the company's domicil. These policy holders have had their own losses to a similar amount to pay. The four hundred and fifty survivors of these within the hostile lines being under no obligation or contract to pay back premiums, decline to do so. If these back premiums were debts, as they are treated by the opinions referred to, then might the four hundred and fifty be com-

pelled to pay their $1,000 each, wherewith the company could pay the policies of those who have died.

At the risk of protracting this argument beyond its proper limit we will make one more illustration taken directly from the tables of this company. We will suppose that the Manhattan Life Insurance Company issued policies of $10,000 each to five thousand persons at the age of thirty, on July 1, 1860, in the Southern States. The premium on each policy by the tables of the company, for an ordinary life policy would be $227. Deduct from this for expenses $\frac{30}{100}$, the usual estimate, and we have left for payment of losses out of each premium $159. The aggregate premiums would be $159 x 5,000, =$795,000. This sum, put at compound interest for five years at $\frac{4}{100}$ would amount to $968,322, which the company would have in hand on the 1st of July, 1865, with which to pay losses among their five thousand southern policy holders. During the five years two hundred and fifteen of the five thousand will die and their policies without interest demand $2,150,000. The back premiums retained by the company out of this sum would be $227 x 215=$48,805, which deducted from the $2,150,000 leaves $2,101,195. From this sum subtract the amount which the company has in hand to the credit of these southern policy holders, viz: $968,322, and it will show the actual loss imposed on the company, viz: $1,132,873.

None of the surviving policy holders would renew and pay up back premiums, because the annual interest on one half the amount which it would require to do so would pay the difference between the premium at the age of thirty and that at the age of thirty-five. The annual premium at the age thirty-five is $263.80

At thirty as we have seen - - 227.00

Leaving a difference of $36.80

To renew the lapsed policy the insured would have to pay four annual premiums with interest at seven per cent., which would be $1,089.60. The annual interest on $525.71 will provide the additional sum of $36.80 for reinsurance by new policy $\begin{array}{r}\$1089.60\\525.71\\\hline\$563.89,\end{array}$ and leave a balance of the immediate advantage gained by the policy holder by taking out a new policy,—besides the principal of $525.71 after furnishing the annual sum of $36.80 during life.

Our illustrations have been somewhat more minute than we would have deemed justifiable, but for the fact that the distinctive characteristics of these contracts and the true genius of the institutions to which they pertain, have singularly escaped that attention in the discussion and adjudications relative thereto to which we esteem them entitled.

It is true that in the opinion of Emmons, J., in the case of Tait v. The New York Life Insurance Company, Circuit Court, United States, Western District, Tennessee, the distinctions referred to are presented in a very clear manner; but the learned judge has given to them comparatively little prominence in his able and elaborate argument, chiefly devoted to showing that the continuance of these policies were contrary to public policy and good morals as affording aid and encouragement to "*rebels.*" We refer the court to his opinion as an able argument in support of his views upon that point. The opinions which hold that these policies are not "*dissolved*" by war but "*suspended*" merely insist that the modern doctrine founded on enlightened christian principles is to mitigate the severities of war as much as may be, and to interfere with private or individual interests in the least manner possible consistently with public or national interests. We shall have no quarrel with them on that score. We concede it. We concede, for the sake of argument, that the restraint which

the law puts upon her citizens in time of war, shall be regarded by the courts as furnishing such excuse, as that they shall be relieved by the proper courts of *every element of penalty and forfeiture* in their contracts which they shall have thereby incurred. We do not overlook the fact that this was an action *at law* in a court incompetent to afford equitable relief. But forgetting that, for the time, we propose to consider these judgments, whether at law or in equity, upon their merits with reference to their attainment of substantial justice, upon the broadest and most liberal principles known to courts of the most comprehensive jurisdiction and plastic power in the administration of justice. Considering them in this light, without reference to the nature or jurisdiction of the court, we insist, whether war annuls or suspends merely such a contract, the "suspension" which these learned courts have given to them is in fact an *extension* of the liability of the company for an enormous amount over the entire period of the war, with an absolute immunity to the policy holders from payments which should, under their contract, precede liability of the company, and would have been commensurate with their losses under the operation of natural laws. Without finding fault with their reasoning, we submit that the vice in their conclusions is attributable to a disregard of one of the most essential elements of the scheme which is intended to be, and is in fact, a most prominent feature in the contract. As we have before said, life insurance is based on two great truths: 1st, The accurate knowledge of the average duration of human life from any given age afforded by the law of average; 2d, the impossibility of predicting its duration in any given case. It is the latter condition which some of the courts have set aside by permitting a vast and numerous class of policy holders, including the representatives of the dead, after the lapse of many years, to signify their

election *nunc pro tunc*. This election, it must be observed, includes the past. To that extent then it is not made with reference to the uncertainties of the future, but with reference to the accomplished facts of the past. With what manner of success could one of these institutions operate if every mortal could have revealed to him the hour in which he shall die? It is the fact that this element of uncertainty is removed by the developement of time before the election is made and the renewals paid that produces the gross inequality. If the representatives of 727 of the dead can collect their policies by deducting their premiums, it is either compelling the company to insure *dead men*, as is said by one judge, or more accurately speaking, it is compelling them to insure for nothing the whole number of 86,292 persons to whom the election was given, and from among whom death selected the 727. If out of the 85,565 survivors the right of election to renew is allowed, perhaps one half of the 734 destined to die during the succeeding year are already warned by symptoms of approaching dissolution, and they too will join the representatives of the dead in renewing, and their representatives in turn will speedily recover, ten fold the amount which they had elected to pay under the admonition of approaching death. It may not be said in reply that this is the hardship of the contract. The learned judges do not pretend that there is any warrant in the contract for any such enormity. It is the result of their notions of equitable relief from penalties and forfeitures. Becoming involved in the discussion of these legal niceties, these questions touching "penalties and forfeitures," "excuse for non-performance," "conditions subsequent and precedent," "executed and executory contracts," "dissolution and suspension of contracts by war," and many others similar, it is submitted, with profound respect for these eminent judges, nevertheless, that they have ren-

dered judgement in direct violation of the letter and spirit of the contracts.

In the case of *Sands* v. *New York Life Insurance Company*, 50 New York, the policy is likened to a lease for a term of years, reserving rent annually with conditions of forfeiture upon non payment, against which, it is known equity will sometimes relieve. Several important distinctions between the cases are patent—the non observance of which led to an erroneous judgment. The most important difference is the absence of all question of election. The lessee *covenants to pay* the annual rent; and the forfeiture is merely to secure that payment. The policy holder does *not covenant* to pay the annual premiums. If the lessor delays payment for a year or more it can be recovered by suit. If the policy holder delays for a year or four years, the back premiums cannot be recovered, although he has enjoyed the full benefit of insurance during the whole period. The object of the forfeiture in the lease is to secure the payment. The proviso that the policy shall cease upon non payment, is not to secure the payment of premiums, but to exempt the company, in clear terms from an enormous liability which they would incur without indemnity, if their policies should remain effectual one hour after the stipulated time for renewal. Nearly, if not all of the other judges sustaining such claims, have, in a similar manner, disregarded this *unilateral* feature of the "policy." If the contract were such that the insured covenanted to pay each premium, and the insurer took such security as seemed sufficient, then the illustration of the lease would be true. Then these institutions, in the cases supposed, might recover from the living the premiums with which to pay the losses to the representatives of the dead. Then would the doctrine of "suspension" and election *nunc pro tunc* be somewhat more consistent with reason and principle, and consonant with justice and equity. Even

in such case, however, it is said that the solvency and existence of such corporations are dependent on the prompt payment of their revenues, to such extent, that equity will not relieve against penalties and forfeitures inserted to secure promptitude. *Story's Eq. Jur.* § 1325. *Robert* v. *New Eng. Life Co.*, Desney, 355.

In several of the cases referred to, the refusal to *relieve from forfeiture* by an Equity Court is based on the fluctuating character of the stock, and hence of the inequality of permitting one to await the developments of time. *A fortiori* a court will not grant such relief in a case where a day or an hour may make a difference of thousands; and least of all can a court, upon the pretense of *relieving from a forfeiture*, confer a right of action by permitting an election *nunc pro tunc* after the *actual happening* of that great change which makes a difference of thousands of dollars. In the cases referred to the relief from forfeiture was refused, lest the parties may have had cause to anticipate the change which made them desirous of paying *nunc pro tunc*. Here we have the parties claiming the right of election after the event has transpired. The learned judge, in *Sands* v. *New York Life Insurance Company*, proceeds to liken the case to debts—to installments, and to the purchase of annuities which were paid for before the war. All of these illustrations are subject to the objections taken to that of the lease. He holds that the contract is one "for life," and that the "forfeiture" is a condition subsequent, and that the contract is not dissolved by war. In the case of *Manhattan Life Insurance Company* v. *Warwick*, 20 *Grat.*, the policy is construed to be an absolute contract to insure *for life*, with a defeasance upon non-payment of premiums. We had not intended, and shall not now engage in, the discussion of technical questions concerning conditions precedent, and subsequent. It is not demanded by the exigencies of this case. Some portions of the

phraseology in the policy are indeed similar to that used to create forfeitures upon conditions subsequent. As we have observed in the outset, however, the actual intent of this policy, as construed with reference to the scheme of Life Insurance, must and does conclusively show that there is no intention to covenant for the payment of the policy *absolutely, except during the first year*; the premium having been received before delivery. This is made more certain by the indorsements which are, for all purposes, part of the policy. 1 *Dover on Ins.*, § 20; *Roberts* v. *the Chenango Co., Mut. Ins. Co.*, 3 *Hill.*, 501; *Emmerson* v. *Murry*, 4 *N. H. Rep.*, 171; *Phillips on Ins.*

The indorsement is, "The premium on this policy is "payable *at the commencement of the risk* in one annual "payment,—All risk to the company commences at the "time of the actual payment of the premium, without "regard to the date of the policy, (unless otherwise "stipulated in the policy,) and continues until the day "named in the policy for the payment of the next pre-"mium *at* 12 *o'clock noon and no longer.*" If the learned Virginia judge is correct, this part of the policy is inconsistent with the other, or else it is senseless and means nothing. It will be observed here, there is nothing said of forfeiture and non-payment of premium. It fixes a limitation which marks *the hour* for the expiration of the only risk assumed. The construction of this policy, if we would permit these emphatic and clear provisions to avail any thing, is that the company enters into a contract by which it *covenants to insure* the assured, from year to year, upon the payment of annual premiums during the life of the assured. We take a distinction between *assuring* and *covenanting* to *assure*. It is admitted that the beginning of the policy reads as if the assured had paid one premium and had covenanted to pay the others, and that the company had actually insured the life during its natural term in consideration of the *payment* and *cove-*

nants to pay. It is to be observed, however, that it provides for the payment of the subsequent premiums "on or before the 14th day of August, *in every year during the continuance of this policy*," and not during the life of the assured, as would have been most natural if it had been regarded by the parties as an immediate and absolute contract of insurance for life, in the sense contended for. It must be further remembered that there was a reason for using the expression "for life," to indicate the particular plan or scheme of insurance agreed upon. There are *term* policies and *life* policies upon many different plans. The indorsement heretofore quoted explains very cleary that the language "for life" was used for the purpose of indicating the term *contemplated* by the parties in the beginning, and *not* for the purpose of *designating the extent of the risk then assumed.* The extent of the risk is more particularly defined, from the very moment of its inception to that of its *expiration*, by words inserted for that purpose. These words are, as they should be, definite beyond the possibility of being rendered doubtful by any construction.

It would be strange indeed to provide that the risk shall extend over the term of natural life in one part, and in another that it shall extend to a day named within a year at "12 *o'clock noon and no longer.* The expediency of defining the duration of the risk, and prescribing, in no doubtful language, the very hour it begins and ceases, is manifest. The words designed to effect that purpose must prevail over the other portions of the contract. "Of two conventions, in all other things equal, we ought to prefer that which is the least general, and which approaches nearest to the affair to which it relates." *Vattel's Rules*, 40.

"In covenants that are in other respects equal, that which is particular, and applicable to the present case, takes the place of that which is general." *Grotius' Rules.*

The unilateral feature of this contract—the fact that the assured does not covenant to pay the premiums—must have great weight upon the construction of the policy, in the particular which we are now considering.

Contracts may be made upon considerations past, present, or promised. The consideration of this policy is the premiums. It is so stated in the contract itself. It has absolutely no other consideration. To which of the three characters of consideration does this belong? The first annual premium ~~are~~ 15 paid cotemporaneously, and is a present consideration. The other premiums are neither past, present or cotemporaneous, *nor promised.* Upon what consideration does this company assure the life of the policy holder *for the term of his life*? If the assured had covenanted to pay, then might the answer be in consideration of the premiums *paid and to be paid* or *covenanted to be paid.* We have already called attention to the fact that the language paid and "*to be paid*" might lead us to suppose that the assured had covenanted to pay, and that phraseology, when looked to alone, lends some plausibility to the doctrine of an immediate, absolute and entire contract for insurance "*for life.*" When we come to consider the whole contract, however, and perceive that the assured had not covenanted to pay, this phraseology becomes unimportant. We find from the contract that the assured had in fact paid *one annual premium*, and had not agreed to pay more. We find on the other hand, from the contract, that the company had assured his life upon such terms that their risk should absolutely and *unconditionally* expire at 12 o'clock noon, on the 14th day of August next thereafter. Other provisions and clauses provided for a new risk each year for the life of the assured. Thus we have an office for every word, clause and paragraph, memorandum or indorsement in the policy.

A contract based upon *promises* has a good considera-

tion, and is rational. A contract reciting as its *consideration* things which have neither been *performed* nor *promised*, but which are left *optional*, cannot be an absolute contract. Hence, we say, this policy assured the life of the policy holder for one year, and set forth the terms upon which the insurance should be continued by renewals from year to year, during the life of the insured.

The distinction, which we desire to press upon the attention of the court, may be further illustrated by reference to the doctrine of equity, relative to an agreement for the purchase of real estate. If A and B enter into a contract whereby A covenants to convey to B a tract of land upon payment of certain notes executed by B for the purchase money, although the payment of the money is a condition precedent to the right of B to demand a conveyance, a court of Equity will, nevertheless, regard A as holding the title in trust for B, and the latter as holding the money for A. (*Story's Eq. Jur.*) This is because both parties have *agreed* upon the sale—the one having covenanted to convey, the other having covenanted to pay. Now, then, if the Company had taken the notes, or in any way required the assured to bind himself to pay the premiums, it might be urged, with some degree of plausibility, and, indeed, but for other portions of the policy, with much force, that the insurance had been effected for the life of the insured upon consideration of premiums paid and covenanted to be paid: that the insurance was acquired and owned by the assured, and the premiums covenanted to be paid belonged to the insurance company. In such case the forfeiture would be upon a *condition subsequent* to secure the payment of money. In this case the *promise* to pay premiums never having been made, they cannot and were not intended to form a consideration for insurance, until they were paid. So if A enter into a binding agreement that he will

convey land to B upon payment of purchase money on a certain day, *at the option of the latter*, B, not covenanting that he will pay, the doctrine of equity above referred to will not apply. In the case of *Davis v. Thomas*, 1 *Russ. and Nylne*, it is said: "Though in cases of non-payment of money, the court will *relieve against penalty* "*and forfeiture; yet, when it is not a question of penalty and* "*forfeiture, but a privilege is conferred upon payment of mon-*" *ey at a stated period, the privilege is lost, if the money be not* "*paid accordingly.*" The payment of the annual premiums then are not "conditions subsequent," upon which "*forfeiture*" is to be suffered, to secure the payment of premiums *never promised*, whatever else they may be. The assured has not covenanted to pay—owes no debt to "secure,"—and has acquired no insurance beyond the "12 o'clock noon" to *forfeit*. If these future premiums, which it is provided *may* be paid, are "*conditions*" of any kind, they are certainly conditions *precedent*. There is little in a name, however, and we shall be content to insist that the hazard of the company *expires by limitation* at the hour designated for that purpose, in the instrument by which the risk is assumed. The policy must be construed with reference to the great scheme of Life Insurance, the principles whereof it is intended to apply for the benefit of the insured.

We should then keep steadily in view—

1. *That it is based on the knowledge of the average duration of human life, and on the ignorance of its duration in individual cases.*

2. *That the premiums paid form the sole consideration for the risk assumed.*

3. *That the contract is an integral part of a vast intricate but harmonious system.*

4. *That the aggregate premiums are commensurate with the aggregate losses.*

5. *That the payment of the annual premium is entirely optional, and the contract to that extent unilateral.*

These truths remembered and regarded, we cannot escape the conclusion—

1. That the Company must assume no risk until the requisite premium shall have been paid, lest the aggregate premiums shall be inadequate to pay the aggregate losses.

2. That, for the same reason, the risk cannot be extended one hour beyond the time for which it has been paid.

3. That it cannot be extended beyond that time, for the further reason that there is no power to enforce payment for the risk so assumed.

4. And, for the further reason, that it will be in conflict with one of the essential elements of the scheme, by contracting to that extent with reference to the past which is known, instead of the future, which is unknown.

In view of these essentials of the scheme, we conclude that the contract or policy assured the life of the deceased for one year from the 14th day of August, when the policy was issued, and from year to year as long as the premiums were paid for that purpose. That the company bound themselves to continue to reinsure, upon the terms mentioned from year to year for the full term of his natural life, and that that is the meaning of the policy. That the annual premium paid cotemporaneously with the delivery of the policy, is the consideration of *all the covenants* of the policy, it being the only consideration *given* or *promised*. That these covenants are for insurance for one year, and privilege of reinsurance every

year during the life of the assured upon payment of a like sum. That these subsequent premiums, which are not promised to be paid, are not "considerations" until paid. That there is no means provided in the policy by which the assured may express his election to renew and keep alive the contract, except by making the payment in strict pursuance of the terms of the policy.

The "policy," as we have construed it, is not only consistent with itself throughout, but consists also with the great system of which it is a part. Construed as an insurance for life with defeasance, and then subjected to that remarkable process of extension and expansion under the misnoma of "*suspension*," it is not only self destructive as to some of its most important elements, but can no longer consist with the harmonious workings of the system, must utterly destroy the equilibrium between receipts and liabilities, and if the number of policies thus "suspended" constituted a considerable proportion of the whole, would inevitably jostle from their solid foundations, the soundest and most gigantic institutions of the kind, and strike them down in insolvency. The most learned actuaries would be hopelessly confounded by the introduction of a new element of loss, which no process could eliminate. If these learned courts could issue their decrees potent to suspend also the ravages of disease, and stay the hand of death during the period of war, then might they justly decree that policy holders should resume their former relations, as returning peace, like the stroke of the clock which knelled the lapse of the hundredth year, in the German legend, would find no change wrought by natural laws. As they may not, however, stop the flight of time, or suspend the operation of those inevitable laws which stamp change upon everything with the flight of each hour, such a suspension, as we have in this and similar judgments, not only contravenes

both the letter and the spirit of the contract, but is at war with the genius of the institutions.

If we are correct in the foregoing views relative to the true relations between the policy holders and the company, as we confidently believe, little remains to be said. If it be true that the supposed "*suspension*," which the court applied to this case, was, in fact, an unwarranted *extension* of the Company's liability, the judgment must be reversed. In that case we can have no great interest in combatting the views of some of the courts which hold that such contracts are not dissolved. It must add greatly, however, to the strength of our positions to subject them to the test of viewing them in every phase in which these questions have presented themselves to the courts.

In our discussion of this question we will not only concede, but affirm, that the courts will hold no contract dissolved by war which may subsist consistently with public interest and also with justice to the parties concerned. It will be seen that we make *two* conditions which we deem essential to their continued integrity. Some contracts, valid when made, become obnoxious to public policy during war on account of their subject matter, without reference to their necessitating intercourse between enemies. Such are contracts of insurance upon enemies' ships and goods liable to capture. *Furtabo* v. *Rogers*, 3 *B. & P.* 191; *Bell* v. *Potts*, 8 *T. R.* 548; *Avery* v. *Swan*, 6 *C. & Black*, 953; *Brandon* v. *Carling*, 4 *East.* Any contract, the continued existence of which would effectually aid or encourage the enemy would be dissolved *ipso facto* under our first condition. Judge Emmons has placed life insurance among that class; and his able and elaborate argument in support of that view, although it has invoked some criticism on account of the evident zest with which he sought to

maintain his positions and applied them, is worthy of profound consideration. Whether or not his opinions in that respect should receive the sanction of this court, it is certain that the contract, if we have understood it aright, must be dissolved nevertheless, under the second condition above mentioned. Whenever the contract can be preserved by "*suspending*" it, the law will declare it suspended rather than dissolved. Having done so, that no injustice may result from the interference of the government's paramount power, the law will hold statutes of limitation, as well as agreements of limitation, suspended also.

It is, in such cases, the highest duty of the court, having due regard for the paramount interest of the public, to adapt the unavoidable interference to the exigencies of each case with the greatest attainable equality. Partnerships between persons of the hostile countries are not dissolved, because they are *per se* vicious, but because the public policy compels the prohibition of the doing of those things essential to a safe and profitable continuance of the relations. It precludes communication; it prohibits personal intercourse; it forbids the settlement of accounts and transmission of balances; and its interference is necessarily such that the continuance of the relation would be hazardous in the extreme to the individuals. Being of such a nature that it cannot be "suspended," and cannot remain in force under the indispensable restrictions put upon the partners, with any advantage, safety or justice to them, the law, *ex necessitate rei*, pronounces it dissolved. Now these contracts, not because of their analogy to partnerships, which some of the courts have been at great pains to combat, but for much stronger reasons, and in justice to *all the* parties concerned, must be regarded as dissolved by war.

We have shown, as we think, both by reason and illustration, that the relation is such that it is not susceptible of being "*suspended.*" The mistake of the learned courts in that respect led them, as it should have done, to refuse to hold them dissolved. If they could have been suspended with equality and justice to both, they should not have been dissolved. But if the "suspension" was a fallacy based upon a misconception, as we think has been demonstrated by mathematical computation and proven by logical deductions, their dissolution remains as the last resort by which justice can be administered. If convinced of their error in the respect mentioned, the eminent judges referred to would themselves, doubtless, have pronounced the abrogation of all policies by the war. Otherwise, the payments essential to the continued integrity of the contract prohibited, it would *ex proprio vigori* terminate itself to the detriment of the policy holder by forcing him to incur the only *forfeiture* stipulated for upon the non-payment of premiums. We shall presently show the nature and extent of that penalty and the relief afforded by the conclusion which we seek to maintain.

For the present we will press a little further upon the attention of the court the impossibility of maintaining the relations between these parties. It has been suggested that war does not dissolve agency, and the case of *Ward* v. *Smith*, 7 *Wall*, cited in support. It would be idle to controvert the general proposition that war does not dissolve agency. If, however, any significance is to be attached to the suggestion in this connection, the position assumed is that these great Insurance Companies are to be held bound to their agents by adamantine chains, after they not only could no longer subserve their interests, but would necessarily inflict disaster by every act and assertion of agency. In attempting to ap-

ply the case of *Ward* v. *Smith*, to this subject, there intervenes the same grievous error of confining the reasoning within limits altogether too narrow. Any generalities upon the subject of agency not only can have no application, but can have no other effect than to divert and mislead. The subject must be considered with reference to the facts as known to this court from history. It must be considered with reference also to the nature, character and extent of the business. It is no isolated case of one or a few faithful, responsible and skilful agents, whose fidelity and business and financial talent may have been, perchance, equal to the emergency of operating and managing a branch office without advice, concert or communication with the principal, but it is the system which is proposed for the company, by those who tell us agency is not dissolved, *as a whole*, and its inevitable results, to which we must look before we shall attempt "the application of natural justice and cultivated reason to the particular case." If it is to be held that the company had one agent, then it had thousands within the hostile lines. If one can receive money paid voluntarily by a policy holder, without evidence of his especial or at least continued authority, a license with which they were not entrusted, when communication was easy, then thousands may do it. Policy holders, it will be remembered, are enjoined not to pay money to any agent except upon the printed receipt. That is a new license each time, and such a precaution would seem to be indispensable; otherwise, defaulting agents might collect after a revocation. It is of course indispensable that the agent should frequently account with the company. Yet the war would prohibit this as it would the transmission of the money. It was surely never contemplated for a moment, and is certainly incompatible with the very existence of the institution, that millions of dollars should be collected and retained

by a thousand or more irresponsible agents for an indefinite period. Least of all was it contemplated that this money should be paid into the hands of an enemy, subject to hostile power and liable to sequestration. There would be no power in the company to communicate with these numerous policy holders—none to revoke the authority of faithless agents, and none to supply their places by the appointment of others. Such an appointment would be illegal and void. *United States* v *Grossmeyer*, 9 *Wall*, 75.

To any one familiar with the history of that portion of the country during the war, the proposition of the retention of agents in the south, without the power of appointing any *flagrante bello*, must be regarded as impossible. The vacancies created by departures for military service, by death, and by a refusal to assume a responsibility and an authority, which must have shocked their sense of justice, would of itself have rendered the scheme impossible. This is true, even from the standpoint of those who treat these renewal premiums as debts due the company. When the subject is considered in the light of their true relations—when it is remembered that the scheme is such, and that the soundness and solvency of the company depends upon it, that it shall have no debts due to it, subject to loss by insolvency, infidelity, and the hydraheaded enemy of those who credit—the proposition that they shall be forced, nevertheless, in violation of their contract to maintain relations rendered impossible by war, and at the same time to accumulate an immense fund in the hands of irresponsible enemies, not one dollar of which could be transmitted or even *reserved* for them, is a proposition untenable and irrational in the extreme. What operation is given to that principle, truly asserted by the learned judges whose opinions we are criticising, that the courts must mitigate the

severities of war—that they must indemnify for the interference of the law by "excusing" the performance of duties and obligations which the stern necessities of the government compels it to prohibit? In any possible view of the whole question, and whatever may be the duties of the companies in respect of maintaining agencies, either under the express or implied obligations imposed by contract or local statute, when the mailed hand of the law is laid upon them to prohibit the performance of these real or supposed duties except to their ruin, the just voice of the law simultaneously absolves them from such a performance. The authority of these agents then is abrogated by war for the reasons which we have given, and not because there is any vice or taint of illegality in the relation itself.

We maintain then that the contracts which required periodical payments to keep them alive were dissolved by the war, not so much because their continued existence was *illegal* but *impossible.*

That a dissolution by war does not work, but prevents a forfeiture. We have seen that the law will, as far as may be, indemnify and compensate for its interference. It will not therefore suffer a *forfeiture*, in such case, of the *value* of the *policy*. A court of competent jurisdiction, therefore, would administer relief in some form, by which the insured should have the *full value* of his *policy* at the time it expired for non-payment of a premium during the war. This would relieve the case of every feature of hardship; would satisfy the wish of the courts to indemnify for the interference of the law, by relieving from penalties and forfeitures, and would enforce exact and equal justice between all the parties. Under no possible plan which contemplates a continuance or revival of the contract, can equal justice to all be administered. Those who have survived in good health would lose im-

mensely by paying back premiums, and the privilege extended to them would be an empty mockery. Those who survive, but who are hastening to the grave under disease, would indeed profit; but as the healthy would not pay, it would, as we have shown, be unjust to the company to compel them to insure; out of thousands of their former policy holders, only the dying and the dead. If this court should hold with Judge Emmons, that life insurance, even when the contract was completed before the war, became in itself illegal, the day of its dissolution would be coincident with that which gave birth to war. If it should hold that life insurance already paid for was not illegal *per se,* then the day of its dissolution would be, in such case, that upon which it expires for non-payment of premium.

The points which we have argued, and those upon which we rely, but which we have not deemed it necessary to argue, may be concisely stated as follows:

I.—THE CONSTRUCTION OF THE POLICY.

1. The insurance is from year to year, and expires at twelve o'clock noon each year.

2. The payment of the renewal premium is the only means provided by the contract for its renewal.

3. Therefore the contract expires by its own limitation upon failure to renew, whatever may be the excuse or cause of failure.

4. The contract is unilateral, giving to the insured option to renew each year.

5. It is based upon the knowledge of the average du-

ration of human life, and upon the ignorance of its duration in particular cases.

6. Therefore it is alike inconsistent with the contract and with the genius of life insurance to permit renewal after expiration of the policy, except at the option of the company.

7. It is, therefore, more consistent with the scheme and the real contract to permit renewal which shall relate back to past time.

8. Therefore the contract of life insurance is of such nature that it cannot be suspended. Under prohibitions preventing the payments essential to its existence, it expires.

II.—THE EFFECT OF THE WAR.

1. The scheme of life insurance is such that the premiums paid by *all the policy holders* provide the fund for the payment to the few of them who die.

2. The war prevented the collection and preservation of premiums from Southern policy holders during its continuance, and the contract does not authorize collection of premiums in arrear.

3. Therefore, war has rendered the scheme impossible as to the entire class of Southern policy holders.

4. The law mitigates the severities of war as far as is consistent with public policy. It does not, therefore, annul a contract which can be preserved consistently with public interest *and with private justice.*

5. If it cannot be preserved consistently *both* with public policy and with justice to the parties, it then is

dissolved, and neither party is required to perform the contract.

6. When a contract, legal in its inception, is dissolved by supervening war, both parties are relieved from all *penalties* and *forfeitures* for non-performance.

7. Therefore, this contract was dissolved, and the company cannot be made to pay on a contract dissolved by war, and never in fact performed by the other party, because it was rendered impossible by war.

8. The forfeiture of all premiums stipulated for in the contract is a *forfeiture* from which equity may, perhaps, relieve, because incurred by reason of the interference of the law. In such case the surrender value of the policy could be recovered.

9. The authority of agents in the south was abrogated by the war *in toto*, because it made it unlawful for them to perform any of the particular duties within the scope of their agency, except the receipt of money due to the company, and because—

10. Annual premiums were not *debts*, and agents were not authorized to collect them except under certain terms, conditions and circumstances which were inconsistent with public policy; and, because—

11. The war, by its necessary interference, rendering it impossible for the company to conduct its business in the south, excuses the company from attempting to do so, and results in a dissolution of all contracts and the abrogation of all agencies, which were part of the business thus broken up.

III—IF THE CONTRACT WAS SUSPENDED AND NOT DISSOLVED, THEN THE COMPANY WAS NOT LIABLE FOR DEATH DURING THE INTERVAL OF SUSPENSION.

See authorities cited on this point hereinafter.

IV.—IF THE WAR HAD NO EFFECT, THEN—

1. The agency of Lindsay was not abrogated.

2. The failure to tender the premium due August 14, 1862, in that case was not excused, both being within the same lines.

3. Therefore, the policy was forfeited by the voluntary default.

The first tender, in this view of the case, could at most be a payment of the premium tendered only, and not of subsequent premiums.

We have not deemed it necessary to cite authorities to support familiar principles. It is the application of these principles to the novel cases presented, which now engages the attention of this court, and this must be accomplished by sound reasoning. For the convenience of those who may desire reference to authorities pertinent to some of the questions which we have discussed, we here subjoin some of the more important citations.

In support of our construction of the policy we cite: *Want* v. *Blunt*, 12 *East*, 183; *S. C.* 2 *Bigelow Life and Accident R.* 201; *Robert* v. *New Eng. Life Ins. Co.* 1 *Dis.* (*Ohio*) 355; *S. C.* 2 *Dis.* 106; *Acey* v. *Ferney*, 7 *Meir & Welsby*, 15 *S. C. Big. R.*; *Mut. Life Ins. Co.* v. *Ruse*, 8 *Ga.*, 534; *Judge Emmons' Opinion in Tait* v. *New York Life Ins. Co.*; *Sheridan* v. *Phoenix Life Assurance Co.*, 1 *E. B. & E.* 156; *S. C.* 8 *H. of Lds Cas.* 745;

Pitt v. *Berkshire Ins. Co.* 100 *Mass.*, 500; *O'Reily* v. *The Mut. L. Ins. Co.*, 2 *Abb. Pr. R., N. S.* 167; *Dillard* v. *The Manhattan Life Ins. Co.* 44 *Ga.*, 118; *Bliss on Life Ins.* 644.

That if the policy was suspended, death in the interval is not covered by insurance. *Bliss on Life Ins.* 269; *Wall* v. *Home Ins. Co.*, 36 *N. Y.*, 157; *Williams* v. *Albany*, 1 *Mich., Nisi Prius*; *Bissell* v. *Am. Ton. Life Ins. Co.* 2 *Big.*, 152; *Tarleton* v. *Stoniforth*, 5 *Term. R.* 695.

That one cannot be relieved from failure to comply with conditions precedent so as to give him a right of action for the non-performance of a contract, the consideration of which was the condition precedent, see *Bliss on Life Ins. pp.* 253, 274; *Fowler* v. *Ætna Ins Co.*, 6 *Wend.* 488; *Corvell* v. *LeRoy*, 9 *Wend.*, 163; *Opinion of Judge Emmons, supra, p.* 32, *and citations*, 2 *Story Eq., secs.* 1302, 1317. *Bliss on Life Ins.*, 280; *Simpson* v. *Accidental Death Ins. Co.*, 2 *C. B. N. S.* 257; *S. C.* 2 *Big.* 497; *Pritchard* v. *Merchants' Tradesman L. Assurance Soc.* 3 *C. B. N. S.* 622. *Howell* v. *Knickerbocker L. Ins. Co.* 3 *Rob.* 232; *S. C.* 44, *N. Y.* 286.

We have called attention to the fact that the deceased did not die during the year for which he had tendered his premium. He made default in his next premium and died without having paid or offered to pay it. In this respect this case differs from the case of *Tait* v. *The New York Life Ins. Co.*, and the difference is a very favorable one for plaintiff in error.

If, however, we have successfully maintained our views as to the true, just and logical application of the law to this case, its adjudication will be based upon broader principles.

Every theory of the claimants is founded on the erroneous assumption that the judgment is, at least, just and

equitable. If the learned judges could have been brought to perceive that they violated the *spirit* of the contract as well as the *letter*;—that the *result* was unequal and unjust, they assuredly would not have indulged their charitable sentiments at the cost of these institutions. They would have given heed to the answer "*non haec in vincula veni.*"

Having argued the rights and remedies of the parties at so much length, we do not deem it necessary to answer the numerous arguments of our adversaries, *seriatim*, or in detail. Our confidence is strengthened by the consideration that *all* the questions find a rational solution in the application which we seek to maintain.

Alfred Pittman
Counsel for Plaintiff in Error

Corrected Copy
For
The Court

In the Supreme Court of the United States.

THE MANHATTAN LIFE INSURANCE CO., OF NEW YORK,
vs.
R. S. BUCK, Executor, etc.

BRIEF OF W. P. HARRIS [redacted],
FOR THE DEFENDANT IN ERROR.

In the Supreme Court of the United States.

THE MANHATTAN LIFE INSURANCE CO., OF NEW YORK,
vs.
R. S. BUCK, Executor, etc.

BRIEF OF W. P. HARRIS AND J. Z. GEORGE,

FOR THE DEFENDANT IN ERROR.

This case presents the same features which characterized the case of Tate et. al. vs. the New York Life Insurance Company.

The policy was issued in August, 1858, and the premiums regularly paid up to 1860.

The next payment was due on the 14th of August, 1861, and before that time elapsed, a state of war existed, and the insured, and the insurer, were placed in the position of citizens of countries at war with each other.

The insurer, a corporation of the State of New York, had taken out a license under the laws of the State of Mississippi, where the insured resided, to carry on its business, and exercise its corporate powers, in the latter

State, by its agent, on the conditions which the law prescribed.

This agent had received the premiums paid, and was, at the time the war broke out, the agent residing in Mississippi, and for aught that appears, is yet the agent; for it does not appear that his authority was ever revoked.

To this agent the insured tendered the premiums which fell due in August, 1861, and the agent refused to receive the premiums, having first taken legal advice, as to his duty under the circumstances.

The reasons which he assigned were, that he could neither transmit the money to his principal nor retain it, there being a law of the so-called Confederate States requiring him to pay over moneys thus derived to certain commissioners.

The insured died September, 1862.

The law of Mississippi under which the agent acted prohibited any agent of any Insurance Company, incorporated by any other State, from transacting any Insurance business in Mississippi until he shall have filed with the Auditor, under the oath of the President or Secretary of the Company, a detailed statement of the Company's assets; the amount of stock, etc., etc., showing also the act incorporating the Company.

Also a written instrument under the seal of the Company, authorizing such agent to receive service of process, and consenting that such service shall be equivalent to actual service on the Company.

Upon this he is to receive a certificate of authority to transact business for the Company.

It is further provided that upon any loss occurring, he shall retain in his possession all monies belonging to the Company for which he acts, then in his hands, or which may thereafter come into his hands, until the loss be paid.

A violation of the provisions of this law was punishable by fine, and imprisonment.

The assured made no tender of premium in 1862, because of the refusal of the agent, and the reasons given for it in August, 1861.

It does not appear whether the insurer was a Company on the mutual plan, or whether a stock Company.

This was an action at law, and the declaration alleges performance of conditions, and on the trial tender and refusal, together with the occurrence of war, was relied on as a compliance with the terms of the policy, and the policy is set forth in the record.

1.

The discussion of the class of cases to which this belongs, in the courts of several States, and in the courts of the United States, has brought into view, doubtless, the chief questions which should be considered, and they appear to be these:

1st.—Was the contract annulled by the operation of the public law, on the breaking out of the war, or merely suspended? And as connected with this question, what is the true character of life insurance?

2d.—What was the effect of the war upon the powers of the agents of the Company, residing in the State of Mis-

sissippi at the time the war commenced, and continuing to reside there during the war, as to the receipt of premiums.

3d.—If the contract was not annulled by operation of law, by the occurrence of the war, was the war, viewed in the light of an insuperable impediment to its fulfillment by the insured, an excuse for non-performance on his part; or is the contract of such a nature that the suspension of the power of the insured to perform, by any cause, save the act of the insurer, distroys it?

I.

DID THE WAR ANNUL THE CONTRACT?

Looking to the question, it is to be observed, that the reasons for upholding the contracts, and dealings between the citizens or subjects of nations at peace, and the policy, which forbids that the occurrence of war between them shall impair the rights, acquired under such contracts, and dealings, are quite as satisfactory as are the policy and reasons which forbid such contracts and dealings in time of war. The commerce and intercourse of nations, the most potent of all civilizing influences, as well as the most essential element of their prosperity, would be materially hampered and restricted if it were felt that the accident of war would destroy much of the fruits of that intercourse.

The necessity of reconciling the policy which fosters intercourse in peace, and the policy which destroys it in time of war, has lead to the recognition of two general rules:

1st.—That all contracts made in time of peace, shall

on the occurrence of war, stand unimpaired, except that their fulfillment or inforcement shall await the return of peace.

2d.—That all contracts made during the war, shall be utterly void.

That strict and perfect allegiance which, in time of war, demands that every citizen shall be at war with the enemy nation, and its citizens, forbids all friendly dealings. The considerations that intercourse affords the opportunity to communicate dangerous secrets of design, or condition of strength or weakness, and that trade or business of any kind tends in some way to strengthen or relieve the enemy, are the solid foundations of this rule.

Griswold vs. Waddington, 16 Johns., 438. p. 499–501.
Prize cases, 2 Black, 687.
The Rapid, 8 Crauch, 161.

In respect to contracts originating during the war, it may be conceded, that it is not necessary to show that their actual tendency is to assist the enemy. But in respect to contracts made before the war, it must be shown in the given case that it is a contract which, by its continuance involves *substantially* the consequences, which are known to flow from contracts made during the war.

There is no such distinction as that sometimes insisted on, between executed and executory contracts. The rule applies only to contracts under which something remains to be done on one side or the other, or on both sides, and all these are executory. Take Ch. J. Marshall's definition of executory and executed contracts:

"A contract is a compact between two or more par-
"ties, and is either executed or executory. 'An execu-
"tory contract is one in which a party binds himself to
"do or not to do a particular thing, a contract is executed
"in which the object of the contract is performed, and
"this, says Blackstone, differs in nothing from a grant.'"

Fletcher vs. Peek, 6 Crauch, 136.

Story on contracts, 11–12 § 18–19.

It at once becomes apparent, that the distinction between executed and executory contracts furnishes no test of an exception to the general rule which protects contracts which anti-date the war; nor can it be said that contracts under which something remains to be done on both sides constitute exceptions; not even where the thing to be done on the one side is the consideration of something to be done on the other, as where the contract was to deliver lumber at a price to be paid, the delivery being, to be made, in the contractor's county.

Buchanan vs. Curry, 19, Johns. 136.

Cited and approve 59 Barb, p. 563.

It is well understood that the law of nations does not annul these contracts. War is an impediment to their fulfillment only. And where they can be fulfilled by means of a resident agent, they are not even suspended, but may be performed, as in the case of the payment of debts.

Ward vs. Smith, 7 Wall, 452.

U. S. vs. Grossmeyer, 9 Wall, 92.

Brown vs. Thistle, Ib., 177.

16 Johns., supr.

1 Peters, C. C. 496, 524.

3 Wash., C. C. 396, 403.

Montgomery vs. U. S., 15 Wall, 395, at 400.

It will be perceived that the recognized exceptions to the general conservative rule, stand on peculiar grounds, and in which it will be seen that the prohibition bears directly on the very "pith and marrow" of the contract; as for example, a contract to carry goods to the territory of the enemy, made before the war, such a contract is not only arrested but destroyed by war.

1 Parsons, Maratime law, 274.
Oliver vs. Ins. Co., 2 Wash, C. C. 317.

Policies of insurance on vessels and cargoes are annulled by the breaking out of war, between the country of underwriters, and that of the owners. This rule was established by Maritime nations which found in the capture of vessels, the most effectual, and indeed often the only effectual weapon. Capture of private property is the soul of maritime war. War always finds immense values afloat, and the chief part of every nation's merchant marine. To allow such policies to stand is to give immunity to the enemy, and to make war on the underwriters.

A nation will not forego capture, nor will it be embarrassed by the interest of its own citizens; hence the rule is that maritime policies will be annulled.

Duer, 473.
3 Wash., C. C. 280.
3 Bush, 298.
4 East, 410, 7.

It is to be observed, however, that modern war makes a marked distinction between the right of capture on the high seas and the right to capture private property on land.

1 Kent Com., 91, (margin.)

Another example is found in the case of mercantile partnerships between the citizens or subjects of nations at war, resting on the famous decision of Ch. Kent in Griswold vs. Waddington, 19 Johns.

The Chancellor points out the reasons, for this exception, and they may be briefly stated.

At the breaking out of the war of 1812, a partnership existed between a citizen of New York and a citizen of London. After the war it was sought to make the New York partner liable for transaction between a third person and the London partner during the war. This third party being an American citizen at the time of the transaction, it was held that he had no remedy against any one; but the effect of the war on the partnership being discussed in the argument, the Chancellor proceeded to announce his opinion on that point.

He held the partnership to be dissolved on two grounds:

1st.—If the London partner was allowed to go on, and deal with British subjects in the name of the firm, so as to bind the New York partner, then in effect the New York partner, an American citizen, was made to violate his duty by dealing in trade with British subjects, in substantial and distinct transactions, during the war between the two countries; and so of the transactions of the New York partners with American citizens.

The other ground was, that in justice to the individual partners, the contract of partnership should be held, dissolved, independent of international law, because there was an inability, on the part of each to perform the duties of a partner, and besides the *business ceased.*

The Chancellor was careful to say, however, that as

to all the rights of partners, and consequently powers, which existed at the breaking out of the war, they stood as other partners. Of course it is clearly implied that each might receive payment of debts, preserve the assets, but could enter into no new engagements. "The partnership may be said to continue, with regard to things past and engagements already entered into."

16 Johns, p. 493.

In regard to acts touching past transactions, each partner retains the agency power which the partnership contract gave him.

There is no substantial resemblance between these cases, and the contract of life insurance, which may be on a non-combatant.

If we say it falls within the reason of the maritime insurance, then the paid up policy on the life of a woman or a child would be annulled.

In the arguments which we have seen on the subject it has been likened to a partnership contract.

It will be observed that what renders the continuance of the partnership obnoxious to the Public law, is, that it involves the creation of new engagements with many distinct persons, by means of general trade, creating new liabilities.

Taking a hint from a *dictum* of Lord Ellenborough, in Want vs. Blunt, 12 East, 183, that a life policy runs from one premium day to another, it is insisted that each payment of premium is a new contract, equivalent to taking out a new policy, and that the law of nations demands that the policy holder should, even where a resident agent exists, otherwise competent to receive the

money, allows his policy to lapse, because he, by keeping it alive, sustains the ~~revenues~~ resources of the enemy.

It might as well be said that a man should allow his horse to starve because by keeping him alive the enemy may make a cavalry horse of him. The premium is but the food that keeps alive an existing policy.

The argument proceeds on the assumption, that the policy, with its stipulations, is not one contract the consideration of which is a series of consecutive payments, but the mother of a succession of distinct contracts and new risks on new considerations.

It is a novelty in jurisprudence, this new contract, with only one party to it; for it is not pretended that the insured can refuse payment, or vary the terms of the policy.

The contract is entire with an entire consideration on both sides. The policy recites on its face, that in consideration of the payment of a certain sum in cash and the annual payment of a like sum the eafter, during the *continuance* of *the policy*, the Company agrees to pay $10,000 at the death of the insured. This is an entire not a severable contract.

Story on contracts, § 21–22, p. 12, 13.

It should be borne in mind, that the insurance contract is made with reference, to the particular age, condition of health, social relations, etc., etc., of the insured and at a particular premium never to be raised it matters not what changes may take place afterward; so that the insured always pays the premium by virtue of the policy and not on any new understanding, and this is a right secured by the contract.

The fact that the contract is unilateral, i. e. without

the right to compel performance by suit, cannot vary the character of the contract as an entire contract. The insurer does not need the power of the courts to inforce redress. He holds it in his own hands. He has the constraining power of *forfeiture of the policy* and the loss of the premiums paid.

Baron Parke says: "The contract called 'life insu-"rance' when properly considered is a mere contract to "pay a certain sum on the death of a person, in consid-"eration of a certain annuity for his life, the amount of "annuity being calculated in the first instance on the "probable duration of the life, and when once fixed it is "constant and invariable."

Dolby vs. East Ind. Ins. Co.
15 C. B. 394.

This definition is adopted by May.

May on Ins., 5.

It is also sanctioned by the court in Sands vs. N. Y. Life Ins. Co., 59 Barb. 556.

"Ordinarily these contracts are in their real character, "the purchase of an annuity to be paid by the insured. "The premium is the annuity, the amount insured is the "price, and the nature of the contract cannot be affected "by the fact that credit is given for the price until the "death of the insured. * * * It certainly cannot affect "the nature of the contract whether the consideration "is paid in one sum or in fifty."

See Cohen vs. N. Y. Mut. Life, 50 N. Y. 610.

These payments are therefore in no substantial sense new contracts or substantive acts, but like every other payment of the consideration or price of a thing bought.

The indorsement on the policy is but a specific explanation of the effect of non-payment, that is that the risk shall cease, with the cessation of payments.

The default in paying premiums is put on the same footing with default in other conditions, as enlisting as a soldier, engaging in forbidden pursuits. Lord Ch. Sugden, speaking of the life policy said: "It is not to be "paid until a certain person die, and except certain "annual *payments be made and other conditions complied with.*"

Phillips vs. Eastwood.
Lloyd & Goold, 290.

He likened it to a debenture and held that it would pass under that name in a will.

The war began or had existence the 19th of April, 1861.

The Protector, 12 Wall, 700.

At that date the insured was not in default. He held a policy, with the right to maintain it, by paying the consideration. The consideration was due to the insurer. It may be that no action would lie, to recover it, nor indeed to compel compliance with any of the stipulations of the contract, on the part of the insured, yet it is as much a duty to pay, as it is to make a true representation at the outset, or to confirm to the other requirements of the policy.

The insurer was entitled to the consideration money, otherwise the payment could be of no avail.

In what respect does a payment of the premium to a resident agent differ from the payment of a debt, in its effect on the rights of the belligerants?

The law of nations does not interpose like a combatant to destroy private property—and the policy was property—fairly earned before the war. The destruction of property is left to the arms of the belligerants, and its appropriation to confiscation laws.

There is no real analogy in the life insurance which may be on the life of a woman or child or non-combatant, to the marine insurance.

The prohibition of indemnity to the enemy has been always understood as applying to loss of property, and especially to property on the high seas.

The cases and the opinions of text writers cited by Chancellor Kent, all refer to Marine Insurance, no case having been found in which the doctrine has been applied to a life insurance.

The tendency of modern opinion is to the conclusion that the policy of the civilized world is to shorten rather than extend the grasp of war. It already involves too much of the fruits of industry, and of civilized effort and enterprise, in which all mankind have a common interest.

The doctrine that if the performance of a contract becomes illegal, the contract is no longer binding is admitted to be true, but to assume that performance here is illegal is to beg the question. The proposition is true as expounded in Odlin vs. Insurance Company, 2 Wash. C. C., that where the legal prohibition operates directly on the subject matter of the contract, as in the case of a contract to carry goods between countries at war.

It is unlawful to transmit money for a debt due to the enemies country, yet this prohibition does not touch the

contract to pay it, and so in this case, the prohibition is as to intercourse and dealing with the enemy, and of the transmission of the money to the principal, but it does not touch the subject of the contract.

The new doctrine appears not to rest upon any solid judicial foundation, we cannot safely build on a few stray, dissenting opinions, and a few overruled cases. On the other hand we find it opposed by numerous well considered decisions by courts of high repute.

Mutual Benefit Life vs. Atwood, 24 Grattan, 497,

Ins. Co. vs. Warwich, 20 Gratton.

Hamilton vs. Ins. Co. 9 Blatch. 334.

Sands vs. Ins. Co. 59 Barb. 556.

Life Ins. Co. vs. Claflin, 7 Bush. Ky.

Robinson vs. Ins. Co. 42 N. Y. 54.

Martine vs. Inter. Life Ins. Co. 53 N. Y. 339.

13 Am. R. 529.

Stratham vs. Mf. Life Ins. Co.

45 Miss, 581.

Cohen vs. N. Y. Life and 50 N. Y- 601.

Sands vs. N. Y. Mut. Life, 50 N. Y. 626,

II.

AGENCY.

If the public law does not abrogate the contract of insurance, the agency connected with its fulfillment, is not abrogated, and the agent may fairly receive the premiums, as any other agent, in the enemies country may receive payment of debts. All agents are liable to ac-

count and we do not see in this circumstance, nor in the fact, that Insurance Companies have a large number of agents, anything which should make the Insurance Companies an exception to the general well established rule, that mercantile and other business agencies, established in foreign countries, are not revoked or terminated by the occurrence of war, and the agents may receive payments and preserve the property, and protect the interest of their principals during the existence of war.

We insist, however, that by the terms on which the Insurance Company obtained a license to ~~secure~~ receive premiums in the State of Mississippi, the company could not, except on the prescribed conditions, withdraw the agency nor the funds, while there were policy holders in that State, and clearly the public law of nations would not hold the agency in such case revoked by the war *per se*.

The right of a State to prescribe and enforce the terms on which a foreign corporation or corporation of another State, may exercise its corporate powers, within its borders, is undisputed.

If the agents powers were not revoked by operation of law, then the tender to him in this case saved the policy.

There was no need to tender the premiums of 1862, after the agent had refused to receive the tender in 1861. The conditions were the same, no change had occurred, another tender would have been an idle ceremony.

Ins. Co. vs. Clafton, 7 Bush. 179.
Bright vs. Ashley, 1 Peters, C.C., 15.
Barker vs. Barkerhouse, 2 Wash. C.C., 142.

III.

DID FORFEITURE ARISE ON ACTUAL NON-PAYMENT OF PREMIUMS?

But assuming that the agents powers were revoked by the occurrence of war which cut off communication with his principal, we are brought to consider the question, and the only question made by the counsel for the plaintiff in error, in this case, and that is, what was the effect of the war viewed, not as abrogating the contract, because its continuance would be against public policy, but as an impediment, preventing payment of the premiums at the time appointed?

It is urged that any cause save the act of the insurer, whether it be the act of God, the occurrence of a public war, the sudden death of the agent, or any other thing, which suspends the power of the insured to pay the premiums at the appointed time destroys the policy.

This proposition is based on the alleged theory or scheme of Life Insurance which is said to proceed, on a nice calculation of the chances of profit and loss founded on the known average of life; that it is ascertained, that there is a certain per centage of deaths of persons of a certain age, in one year; that the scheme is so arranged that the premiums paid in each year, shall answer the losses of that year by the death of policy holders—that exact punctuality, regardless of all accidents or impediments is absolutely demanded, otherwise the calculations of the underwriters will be upset, and the scheme frustrated; that in construeing the policy we are not to be governed by the ordinary rules of construction nor are we to give to its terms their ordinary legal effect, but we are to study the scheme of the underwriters, of which the policy is only an integral part.

It is assumed in this hypothesis, that courts are bound so to construe and estimate the terms of the contract of insurance as to avoid disappointing the underwriters calculations.

These calculations (if we understand the matter—as expounded in the brief of the counsel), are nothing more or less than this: That the insured takes upon himself the risk of every occurrence, it matters not what, which may prevent his meeting the payment, however anxious he may be to pay, or able pecuniarily to pay.

The disposition of one party to a contract, to put the burden of all accidents on the other, is not peculiar to underwriters and it is an easy matter to show in any given case, that unless the burden is thus placed calculation will be disappointed.

We must be permitted to say that we have seldom encountered so many subtle refinements, as are set up in these causes.

The character of the condition or stipulation for payment, of the price of the policies, has been carefully considered in the numerous cases cited in this brief, and the conclusion reached that the legal character of the stipulation as to the payment of premiums is not such as to exempt it from the qualifications usually attached to the payment, of money, i. e. the vis major.

There is a vested right under the contract, and a privilege, and that is a vested right, which may be defeated by the non-compliance with certain matters to be done, or omitted in the future, the payment of premiums would seem to range itself with the other conditions, clearly subsequent conditions by failure of which for-

feiture is entailed. It is worthy of notice that the word 'forfeiture,' has been adopted as applicable to all the defaults, and especially to that of non-payment of premiums. Something before possessed is lost. So text writers use the term as descriptive of the legal consequence of the non-performance of a condition subsequent. "If the policy by its terms is forfeitable for non-payment of premiums, etc."

May on Ins., p. 406, § 341.

Being a personal contract, a money contract, it is exactly the case of mutual covenants the one covenant being the consideration of the other, and in which the one party, before he can recover on the contract, must aver performance of his whole covenant, *or what is equivalent* to it, being entitled to the excuse of vis major, *for delay in performance*. Accidents which makes it impossible, ever to perform the contract, stand on a different footing.

Story on Contracts, § 21, 22.

In Want vs. Blunt, 12 East, 410, the insured died within the fifteen days allowed within which to pay, his quarterly premiums, after the quarter day had passed. The court construeing the words of the policy, held that the fifteen days indulgence was extended only to the party while living and in good health, for by the express terms of the policy, if the insured suffered the ~~greater~~ quarter day to pass, he must be in good health at the time he pays, *after* that day. The death after the quarter day and before payment made it impossible to fulfill the terms of the policy, which were matters of substance. Here was a *default* ~~carried out~~ Cured which but for the accidental death, might have been ~~carried out~~ but was *not* ~~carried~~ Cured

At all events the courts have in a great number of well considered cases, given to this peculiar contract that character, as will appear from the cases.

That this is eminently just cannot be disputed.

No one is in default by the act of God or by overwhelming and irresistable force.

From the face of the policy it is impossible to state whether it was on the mutual plan or not. The Company is said to combine both the stock and dividend feature and the mutual, and that policies issued to persons who do not thereby become members of the Company.

Certain it is that there is nothing in the policy to indicate that it makes the policy holder a member of the Company.

Howsoever this may be, we do not see that it affects the construction of the policy itself. It is waste paper if it does not of itself and in itself determine the character of the obligations and stipulations of the parties. No theory of profit and loss can affect it.

The prevention by war of payment or tender of premiums, may be avered and shown in an action at law.

59 N. Y. 339.

13 Am. Rep. 529.

W. P. HARRIS,

[redacted]

In the Supreme Court of the United States.

THE MANHATTAN LIFE INSURANCE CO., OF NEW YORK,
vs.
R. S. BUCK, Executor, etc.

BRIEF OF OWEN McGARR,

FOR THE DEFENDANT IN ERROR.

VICKSBURG HERALD PRINT.

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BRIEF OF OWEN McGARR,

FOR THE DEFENDANT IN ERROR.

In two cases lately before this court on review, we believe the important questions arising upon this record underwent very full discussion and examination. We shall therefore be content to lay before the court certain considerations that have arisen in our mind, upon the arguments filed for the Plaintiff in Error, and the elaborate opinion of Justice Emmons in "Tait vs. N. Y. Life Insurance Co,." widely distributed and greatly relied upon, by the Insurance corporations interested in the re-

sult to be reached by the court, in the class of cases to whsch this belongs.

I.

The office of the brief of Counsel for Plaintiff in Error seems to be, only to open up a new avenue of approach to the conclusions reached in the opinion in Tait vs. N. Y. Life Insurance Co.

The argument is mainly devoted to a mathematical analysis of certain principles claimed to be fundamental in the scheme of Life Insurance, and to the maintainance of the proposition, that any other construction of the contract than the one contended for, *would be subversive* of these principles—constituting the life of these corporations.

The argument is without a proper subject. To this case, we insist that it is wholly inapplicable, for the reason, that the premises upon which it is founded have no support in fact. They rest upon the assumption that the Defendant in Error was delinquent in meeting his obligations under the policy—a proposition we contend, that finds no authority in the record.

But it is unsound.—We do not see, because the scheme of Life Insurance may involve certain mathematical features, serving to individualize the business, from business agencies generally, that new rules of law must be fashioned and employed in the construction of their contracts, to the end, that these characteristic features may not be allowed to operate to the disadvantage of the scheme.

We hold that there are certain universal rules of law, governing the construction of contracts, of like force and application, whether one of the contracting parties be a Life Insurance Co. or a Railroad Co. and facts constituting cases following within them, are measured and controlled by them, whatever may result to one of the parties, by reason of any peculiarity entering into the scheme of its organization.

Parties are supposed to contract in view of established law, and are to receive protection upon, and compelled compliance with their contracts, as this law may construe them.

Now we say, the contract between the insurer and insured in this case was substantially this: That the insured, through the period of his life, was to pay the insurer annually $265, and upon his death, the insurer was to pay his legal representative $10,000.

Then the inquiry arising upon the case as made by this action, is, did the insurer on the 14th of August 1861, perform his obligation under the contract, by actual payment of the premium then due, or by doing what the established law recognizes as a proper substitution for it, to protect against a forfeiture of rights accruing under the policy? We say it is a disregard of the law, with respect to which these parties are presumed to have contracted—to say—if there was no actual payment, the only inquiry is, whether or not it would be subversive of the peculiar organic principles of life insurance, to hold the company bound by constructive performance, as might be proper, if it had been a railroad corporation.

Let us illustrate: Suppose that instead of war supervening to prevent payment, Lindsey, the agent who had delivered the policy and received the other premiums, for reasons satisfactory to him, had squarely refused to receive the money tendered for the annual premium of that year due by the insured, and the difficulties of communicating with the office at New York had been such, that no payment could have been made there for a week, after the stipulated time, would the company be heard to say that, in deference to the peculiar organic construction of their scheme, that the policy must be held to have lapsed, and the tender to the agent must not, under the general rule of law, for the purpose of protecting the insured, be held tantamount to payment? We say, between the illustration and the case presented by the record, the difference is solely one of time, between the value of a week, and the period of the war, and not of principle.

On page 9 of the brief for Plaintiff in Error, certain adjudged cases are criticised as excusing payment of premiums by the insured. The cases do not excuse this necessary compliance with the contract of insurance —they require it, but hold under the law, it may be suspended by *vis major*—or constructively performed by tender. Actual manual delivery and receipt of money, is not the only method of compliance, that the law in its conservatism, recognizes as sufficient to protect against forfeiture in such cases.

The illustration of figures given on the same page, is based upon the theory, that out of 5,000 insured, 215 will die the first year, a proposition singularly at war with the adopted tables of average.

To show that this illustration is disingenuous, it is only necessary to anylize it by means of the tables of average, referred to in the preceding page of the brief.

If there are 215 deaths the first year of the war—and that is the idea, for in crediting the sum ot the losses by death, to be paid, only one year back premiums are allowed say $227x215=$48,805. There must have been 25,000 policy holders in the company—and instead of premiums collected, out of which to pay losses, being $795,000 as computed—they would be $795,000x5=$3,975,000.

In the light of these principles of average, we fail to understand, where the loss to the company occurs, by reason of the failure of certain policy holders forfeiting the premiums paid—it rather looks as if the company got something for nothing.

As we interpret this case, we do not see that a solution of its questions is advanced materially, by indulging this speculation in figures, but as it may be made useful in suggesting the immense profits of these corporations, we ask the further attention of the court for a moment to the subject—with this view—as applied to the case under consideration.

The calculations are employed to show, that in the scheme of Life insurance the principle is, that the premiums must be made to pay the losses. The problem then is what are the losses, and what must be the premiums? By known laws of average, the loss, by death, in a given number ot insurances, say 86,292, at 30 years of age, for $10,000 each, is ascertained, with accuracy, to be 727 for that year. The loss to be met then will be $727,000, or about $8 from each of the 86,292.

Now when the insured, in this case, took out his policy, his premium, according to the table of rates of the company, show him to have been 34 years of age. The difference between the rates of premiums at 30 and 34 years of age, is 70 cents a year, or $2.10. We find, then that he paid not only what the losses of the company required for that year, upon this basis of average, but he paid over three times as much. Instead of paying $81 for his $10,000 policy, he paid $265. Of course there are the expenses doing business, the increase of death rates, and falling off of premiums each year, to be provided for.

In the illustration given, it is admitted that 30 per cent. of the premiums necessary for losses, will pay expenses, to say nothing of the interest accruing upon this fund. Then allowing for the average increase of death rates, and falling off of premiums, it will be seen by this calculation that the margin of profit, to these great institutions, is simply immense, and their rapid increase of wealth a problem of no difficult solution. It is calculated that the interest alone upon the reserve fund of this company pays its losses.

But it is insisted, that while the tender shown by the record to have been made on the 14th of August, 1861, may have saved the forfeiture for that year, the record shows no tender for the year 1872, preceding the death of the insured, and forfeiture resulted then. This is rather more in the nature of speculative discussion than sound argument. If there existed a reason, why the insured, after the agent Lindsey had expressly refused to receive the premium for 1861, upon grounds, that, in 1862, had only widened and strengthened, should

again apply to pay, in 1862, upon the principle of protecting against forfeiture, it is not to be found in the argument of counsel. It would have been just such a performance as the court in "Hoyt vs. Sprague, 61 Barb. N. Y. 499," characterized as an "idle ceremony." But the express question has been decided.

N. Y. Life Insurance Co. vs. Clopton.

7 Bush Ky. 179.

Blight vs. Ashley.

Peters. C. C. 15.

Barker vs. Parkenhouse.

2 W. C. C. 142.

II.

The injudicial character and intolerance of the opinion in Tait vs. N. Y. Life Insurance Co., while quite observable, is of no consequence here. The substantial propositions advanced, and arguments employed for their support, are matters meriting attention.

The proposition, to which the opinion is mainly devoted in support of, is squarely set forth in these words.

"Believing there is no judicial authority anywhere to so far modify the law, as to preserve in force this contract, we hold it was abrogated the moment the insured and insurer became public enemies."

This clearly defined position, brought its author in conflict with the court of last resort in Virginia, in Manhattan Insurance Co. vs. Warwick. 20th. Gratten.

That of New York in Sands vs. Insurance Co.

59 Barbeur.

That of Kentucky in Clopton vs. Insurance Co. 7 Bush.

The United States Circuit Court of New York in Hamilton vs. Insurance Co. 9 Bletchford 334,

And what he is pleased to term a dictum of the court in Robinson vs. Insurance Co. 42 N. Y. 54.

But he disposes of them in this terse and off-hand style:

"Since the rendition of our judgment, but before the preparation of this opinion, two other decisions, by an influential tribunal, have been added to the list of those *which oppose our own, but for them*, we should have deemed the question, whether an insurance company, created and protected by the government, located in, and drawing its funds from the loyal region, could continue a policy upon life for the benefit of an enemy, as *unworthy* of argument. We should have confidently held that a state of belligerency dissolved the contract."

If the contract was dissolved by operation of the war, as affirmed in this propsition, it was *eo instanti* upon its occurrence, between the section of the insurance company and that of the insured, by which they became enemies. This court has established that event as occurring on the 19th of April, 1861.

The Protector, 12 Wal. 700.

It is admitted, if this were the case of a bond, or note for the payment of money, made on the 14th day of August, 1860, and maturing August 14th, 1861, the char-

acter of executed consideration contained in the contract, would have allowed the war no other effect, than to suspend final execution by payment of the money, until after the termination of hostilities.

What was the contract represented by the policy in this case from the 14th day of August, 1860 to the 14th of August, 1861, but a contract of executed consideration? What was left to be done by the insurer if the insured had died on the 20th day of April, 1861, but to pay the $10,000 as it had become obligated to do, when it received the premium in the preceding August? Upon what principle could the obligation of the insurer to pay, had the insured died as suggesteo, have differed from that of a promiser of a note or obligor of a bond maturing at the same time?

The consideration of the obligation in either case, has been executed, nothing remaining to be done but to pay, as the obligation required, at the end of the war. But, says Justice Emmons, in elucidation of this question:

"A marked difference in the relations existing between enemies under this policy of insurance, and those of ordinary debtors and creditors is, that in the latter the obligatian is full before the war. No new value or source of credit is placed in the hands of an enemy during its progress. Here, no obligation whatever exists, but a debt is created by much mutual activity and elections between the parties. A source of credit, and a power of purchase with its proceeds is thus originated. A value is created, which would have had no existence in the hostile country but for the action of one of the very enemies, whose government has the power of seizing it.

"In the instance of a debt paid over to a local agent, no increased obligation, or value of any kind, is subordinated to the hostile State. The debt is equally in its power, whether in the hands of a debtor, or paid over to the agent.

"The debtor only is changed, both residing in enemy's territory. They are so wholly unlike in their circumstances, and in practical, financial results, that the same rule should not be applied to each."

This is very sublimated logic, but will hardly sustain the doctrine of the annulment of this contract "the instant the parties become public enemies." * For it is this that is under discussion, and not any new conditions that may arise, upon the effort to pay a post-bellum premium.

III.

The doctrine held by the elders of the law, that it was upon the principle of protecting against the evils of "intercourse" and "communication," that international law declared certain contracts dissolved and others prohibited—is stoutly combatted and denied in this opinion, and the new one set up, that it is to obviate and prevent "a source of credit, and a power of purchase with its proceeds" that such contracts are denounced. But we fail to see how it can cut any figure in the construction of this contract as it stood between the 14th of August, 1860, and the 14th of August, 1861, certainly no "new obligation" either way was created, or required to be assumed, in the contract between these dates. If it was a contract of executed consideration at the first date, it

remained equally so at the second, and if this be true, upon what principle or judicial authority can it be held, that the war annulled it in April, 1861?"

In Statham vs. New York Life Insurance Co., 45 Miss. 581, a case the counterpart of this in its facts, the Supreme Court of Mississippi gave full consideration to the question, of the distinction between contracts which war operated to dissolve, and those which it only suspended as to final performance. And, upon reason and authority, they declare the grounds of the distinction to be what we contend for, in these words:"

"If the contract may be preserved or performed, without the transmission of money or property from one enemy to the other, or without their *intercourse or correspondence*, then no principle of law or policy, arising out of a state of war between their respective countries, would demand an abrogation of the contract or its non-performance. Reason is the life of the law, and when it ceases the law itself dies."

And to the same effect, that it is the evils of "intercourse" and "communication" that stand condemned in the policy of the law.

See Griswold vs. Waddington. 16. Johns. 438.

Conn vs. Penn. 1 Peters. C. C. 496.

Denniston vs. Imbrie, 3 Wash. C. C. 396.

Potts vs. Bell 8 Tenn. 548.

Paul vs. Christie, 4 Harris & McHenry, 461.

Buchanan vs. Curry, 19 Johns, 137.

Ward vs. Smith, 17 Wallace, 452.

U. S. vs. Grossmeyer, 9 Wal. 32.

Montgomery vs U. S., 15 Wal. 395.

Brown vs. Hiatts, Ib., 177.

IV.

If tho war did not have the effect of dissolving the contract of insurance in this case, was there a forfeiture of the policy in consequence of the failure of the insured to make actual payment of the premiums maturing in 1861 and 1862?

Upon the authority of Ward vs. Smith, 7 Wal. 447; U. S. vs. Grossmeyer, 9 Wall., 92, and Montgomery vs. U. S., 15 Wal. 395, we say, it was not in contravention of international law, that the insurance company should have continued Lindsey its agent in Mississippi, after the war became a tact, at least as that agency related to contracts of insurance ante-dating the war, and negotiated through him. In U. S. vs. Grossmeyer, Judge Davis, delivering the opinion of the court said:

"We are not disposed to deny the doctrine, that a resident in the territory of one of the belligerents may have, in time of war, an agent residing in the territory of the other, to whom his debtors could pay his debt in money, or deliver to him property in discharge of it, but in such case, the agency must have been created before the war began, for there is no power to appoint an agent for any purpose, after hostilitfes have actually commenced, and to this effect on all the authorities."

The conclu ion here announced, seems to have been reached, after full examination of authority and the question placed, by this court, beyond the neces-

sity of further discussion. The war then, of itself, not operating to dissolve the agency of Lindsey, there is nothing in the record to show that his authority as agent was revoked by the company before August 14th, 1861, or that he had by his own act of renunciation ceased to be agent. The insured evidently regarded him as the agent, being without knowledge to the contrary, and for that reason tendered him the premium, at the date of maturity for that year. Lindsey clearly considered that he was still the agent of the company at that date, as, according to his statement, he took legal advice upon the subject of his duty to the company and the insured. His refusal to accept the gold, tendered by the insured in payment of his premium for that year, was an error of his own, the consequences of which can not. in jnstice be visited on the insured or his representative. And we respectfully submit, that the tender secured the insured against the defence of forfeiture set up by the company.

V.

We ask the court's attention to the law. under which the Manhattan Insurance Co. was doing busihess in Mississippi, at the time this contract of insurance was made, found in Revised Code of Mississippi of 1857, page 303. We insist, by this law, the company, with reference to its business in the State, was localized and domiciled there. That it contracted to maintain an agency in the State, for the transaction oi such ordinary business as was commonly entrusted to agents, such as the receipt of premiums, receiving proof of loss, &c,, and the company cannot be heard to claim a forfeiture for the non-

payment of premiums, at the home office, while this law was in force. The Supreme Court of Mississippi have had this law under consideration in Stathem vs. N. Y. Life Insurance Co. 45, Miss. 581, and reached this conclusion :

" Foreign Companies dealing with our citizens under this law, must be considered as engaging to accept performance from the assured here, and on their part to pay losses here."

And a similar law of Virginia has received a like construction by the Supreme Court of that State,—Warwick vs. Manhattan Insurance Company, 20 Gratham, 614.

OWEN McGARR,
FOR DEFENDANT IN ERROR.

No 7776.

A. B. Wilson's Impd Machine for Sewing Cloth &c.

Filed Oct. 7. 1861.

Patented 12th Novr 1850

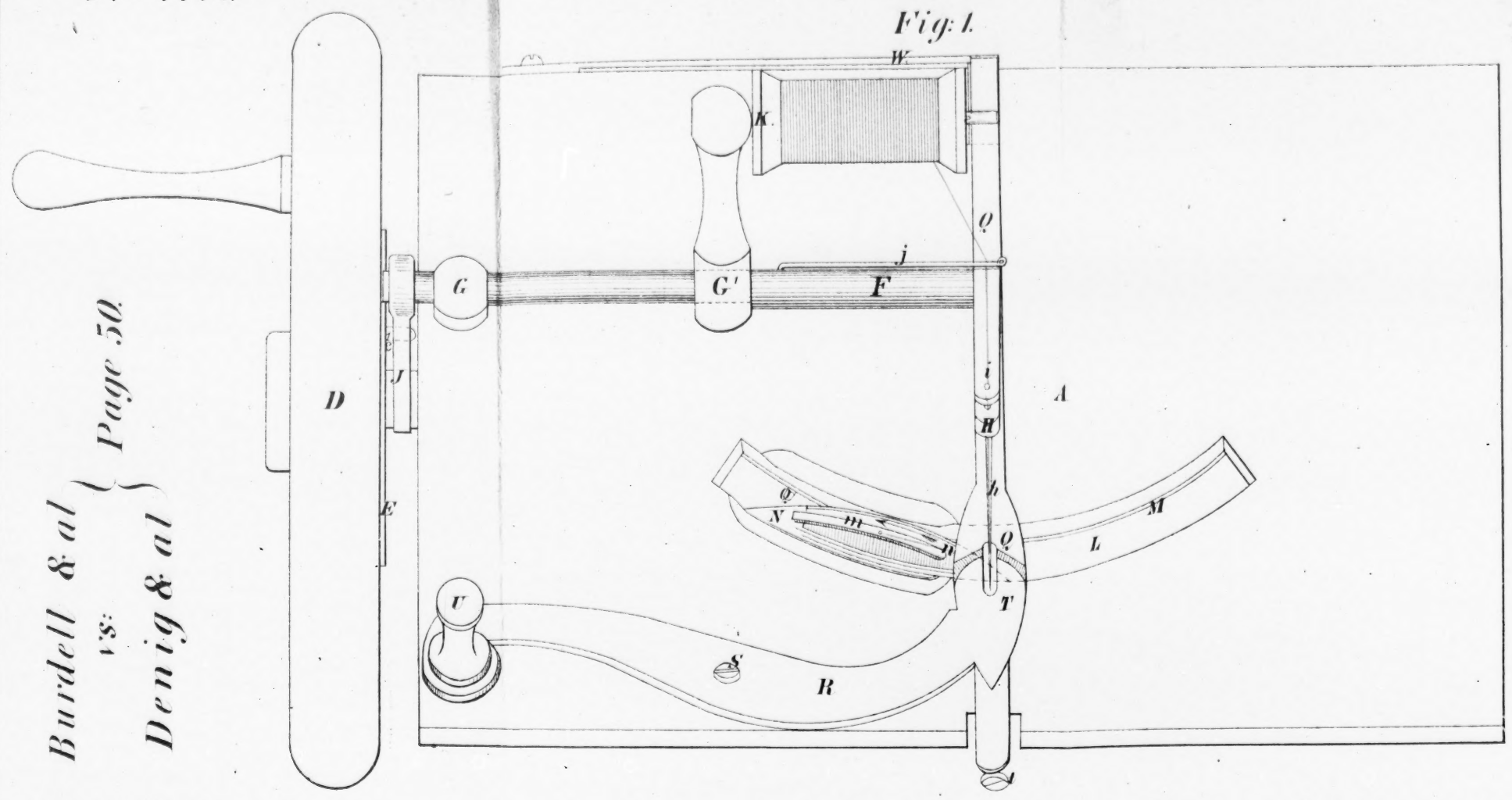
Patent Nov: 12. 1850

Burdell & al vs Denig & al

Page 50.

No 680

Fig: 1.



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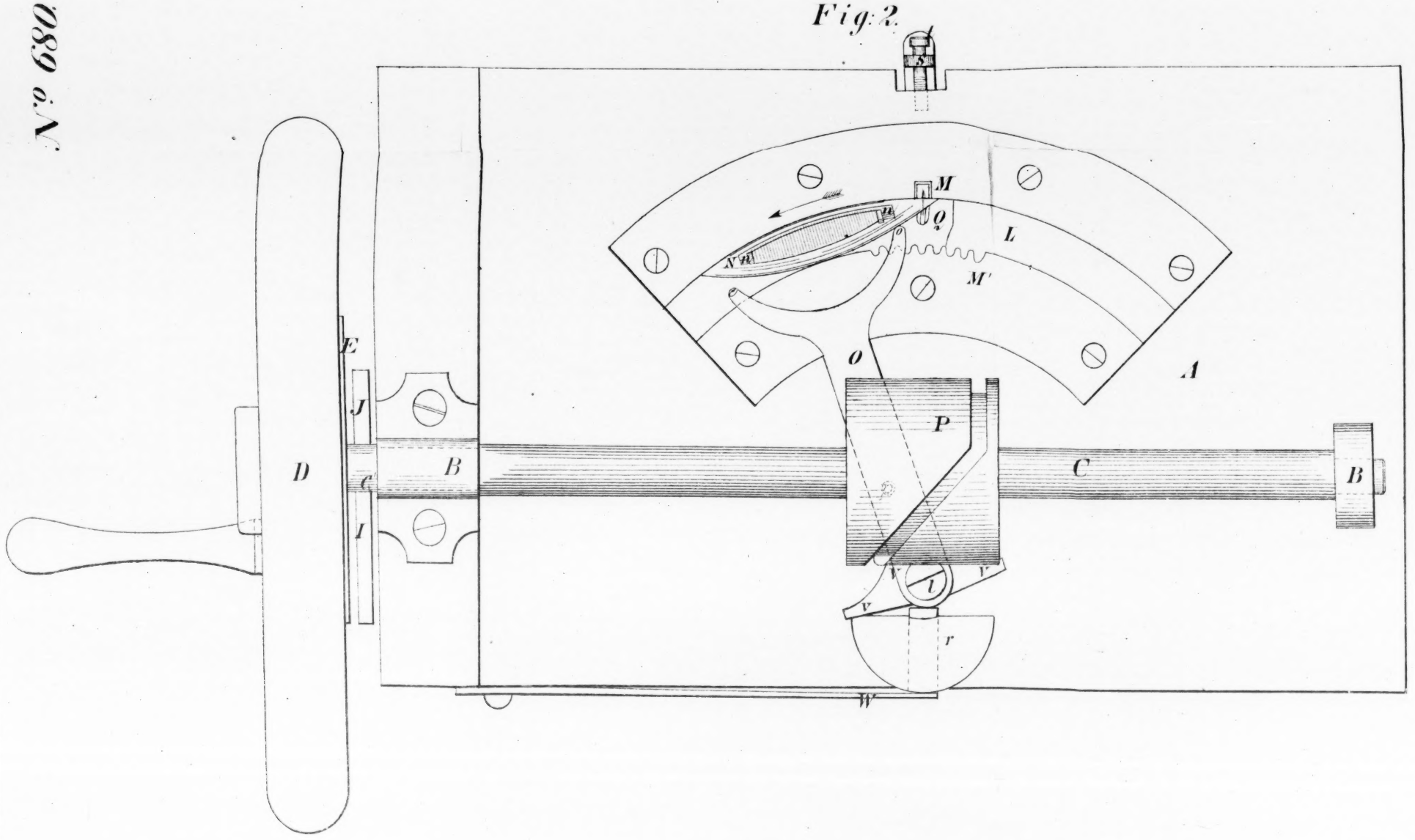

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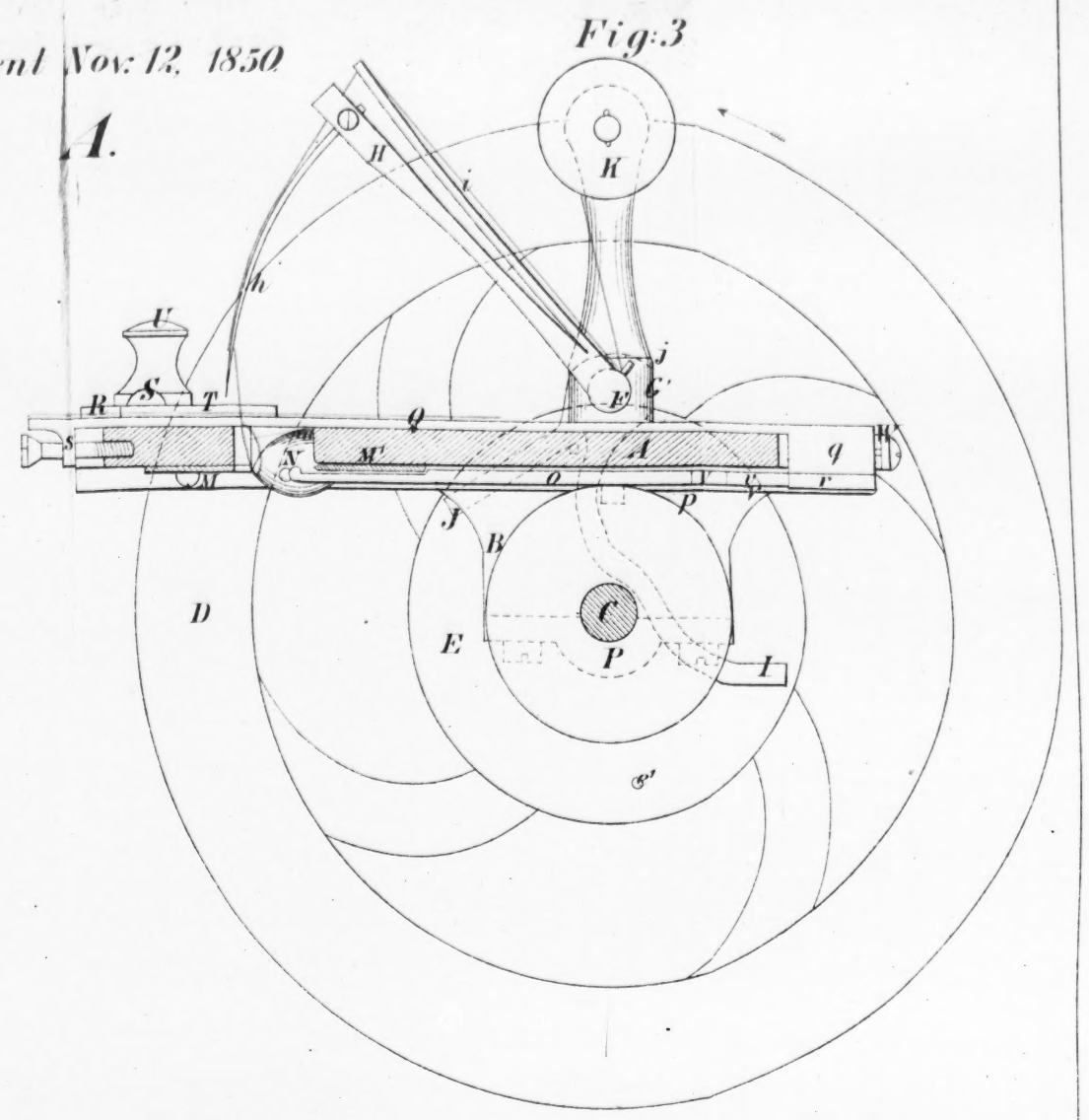

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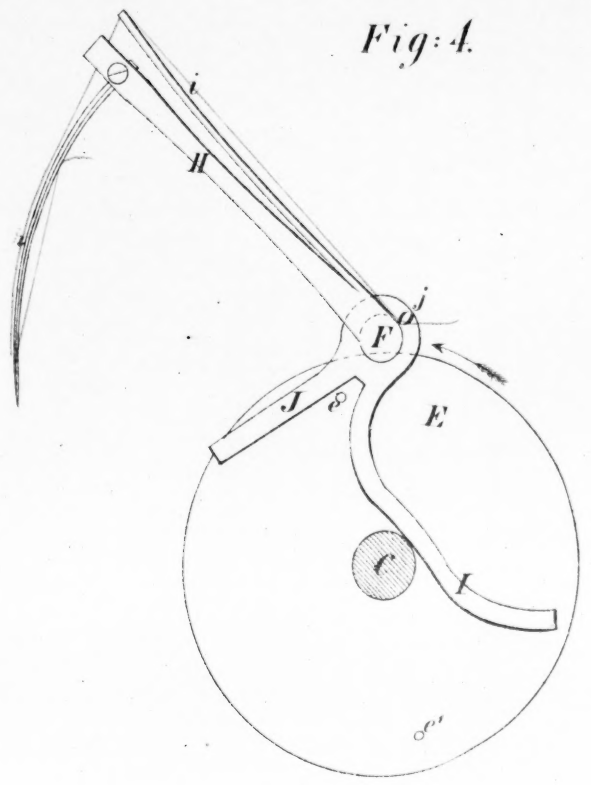
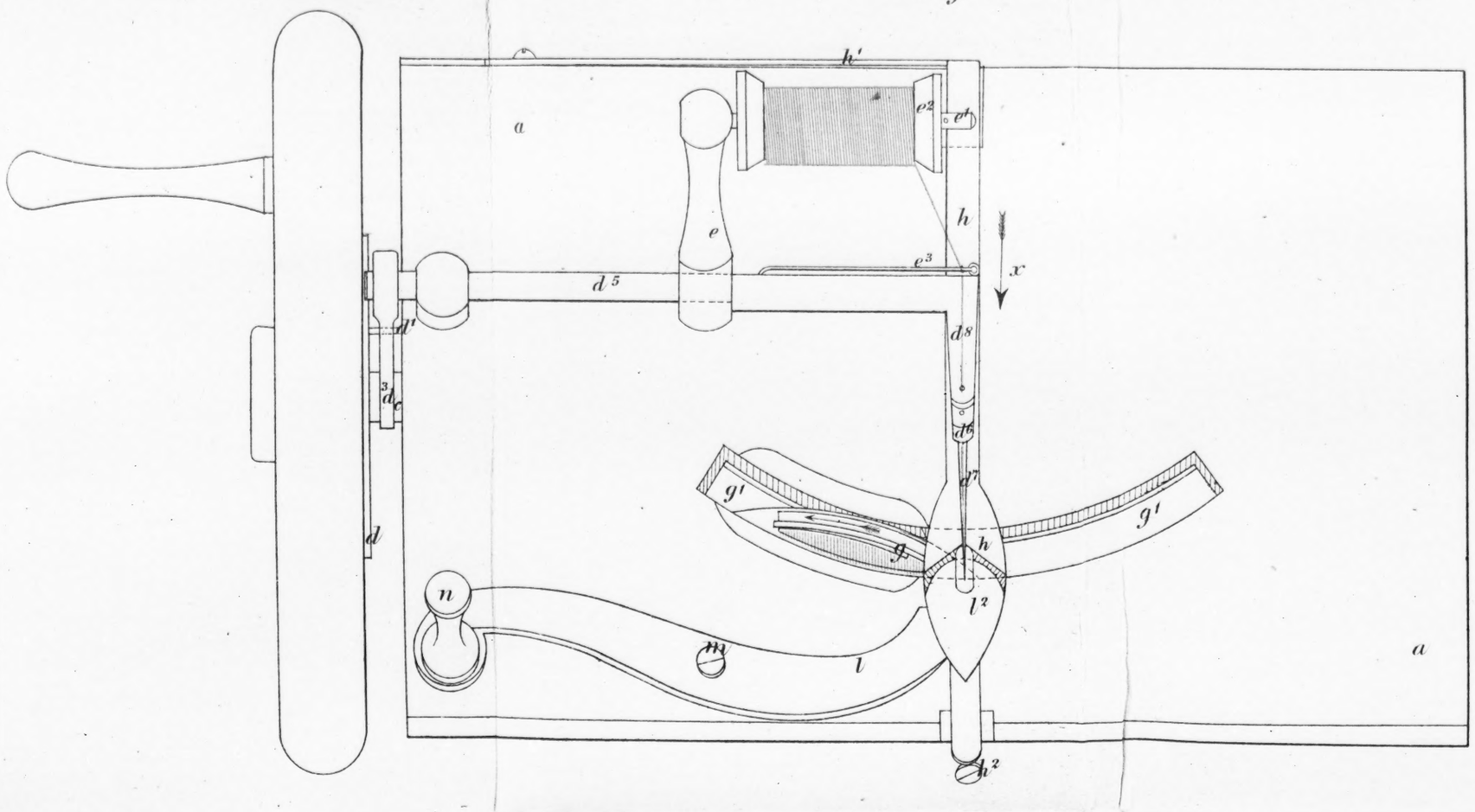


Fig: 1.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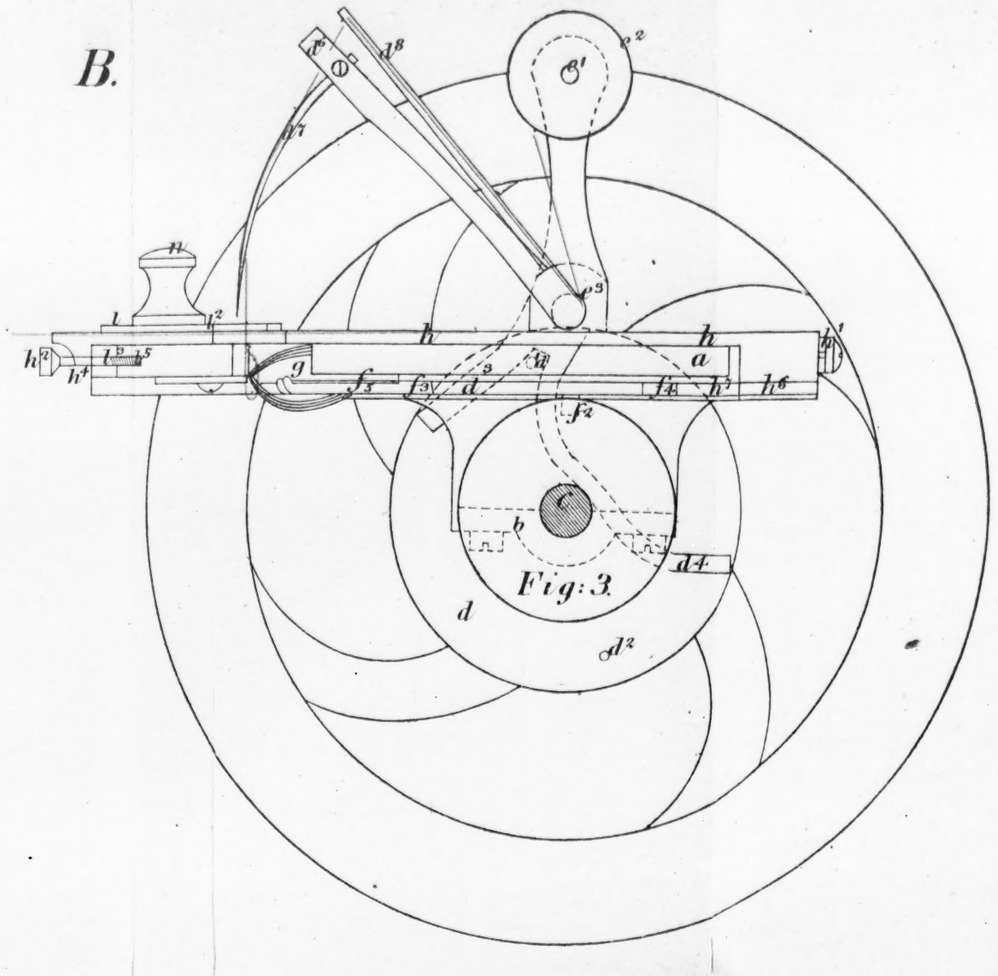
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Fig: 3.
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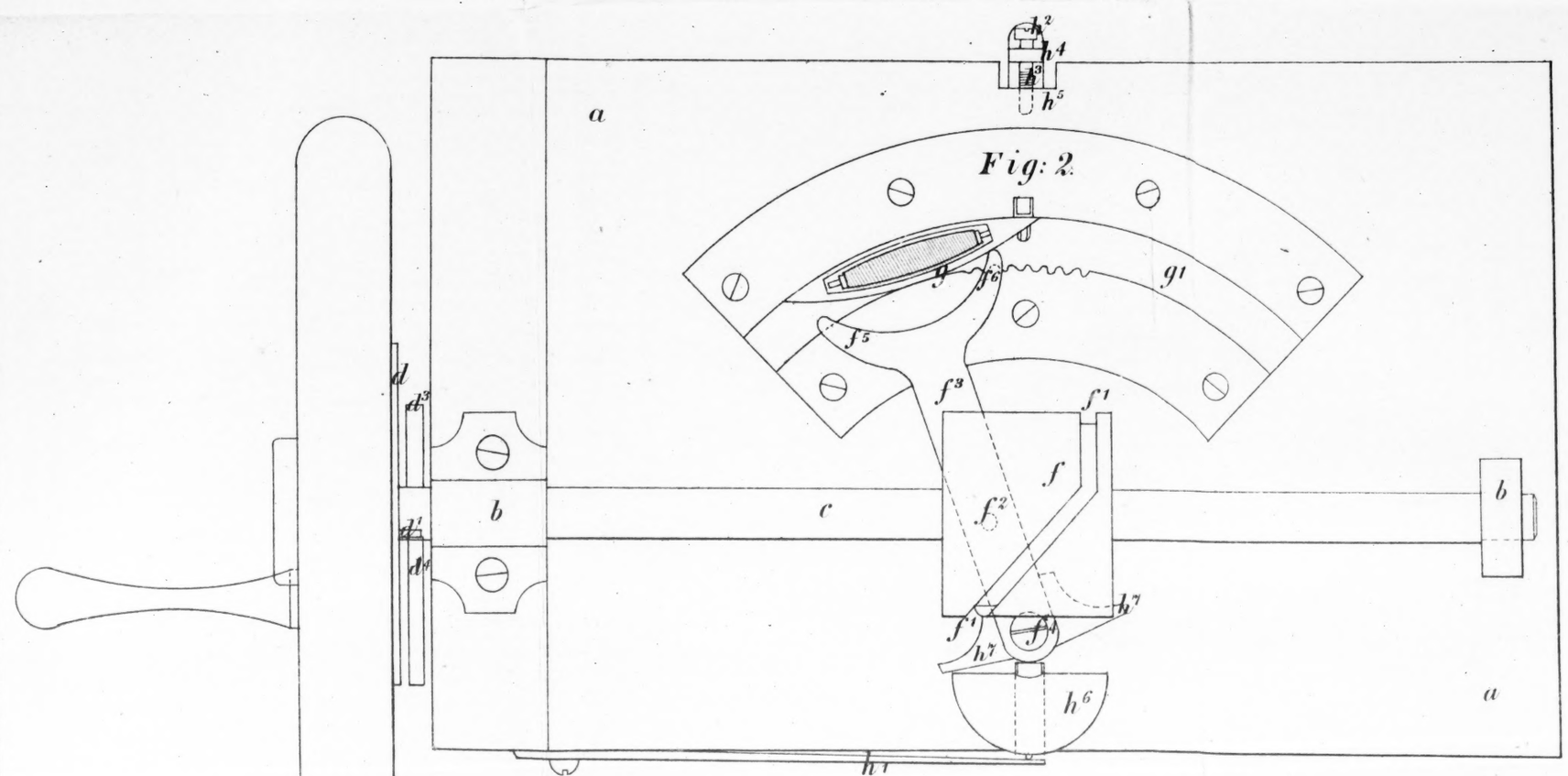
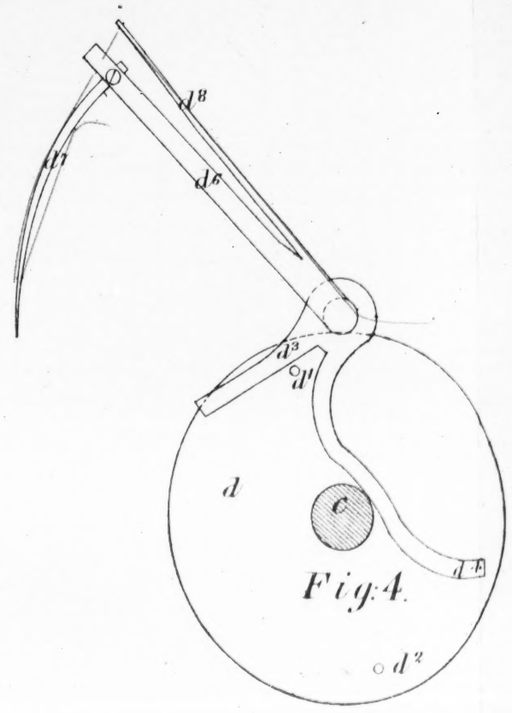

h2
h4
h3
h5
a
Fig: 2.
g
f6
g1
f5
f3
f1
d
d3
b
c
f2
f
b
d'
d4
h7
f'
h7
h6
h1
a


d8
d7
d6
d2
d'
d
C
d4
Fig: 4.
d2

Reissue No. 414.

A. B. Wilson. - Sewing Machine.

Reissued Dec. 9, 1856.

Fig. 1.

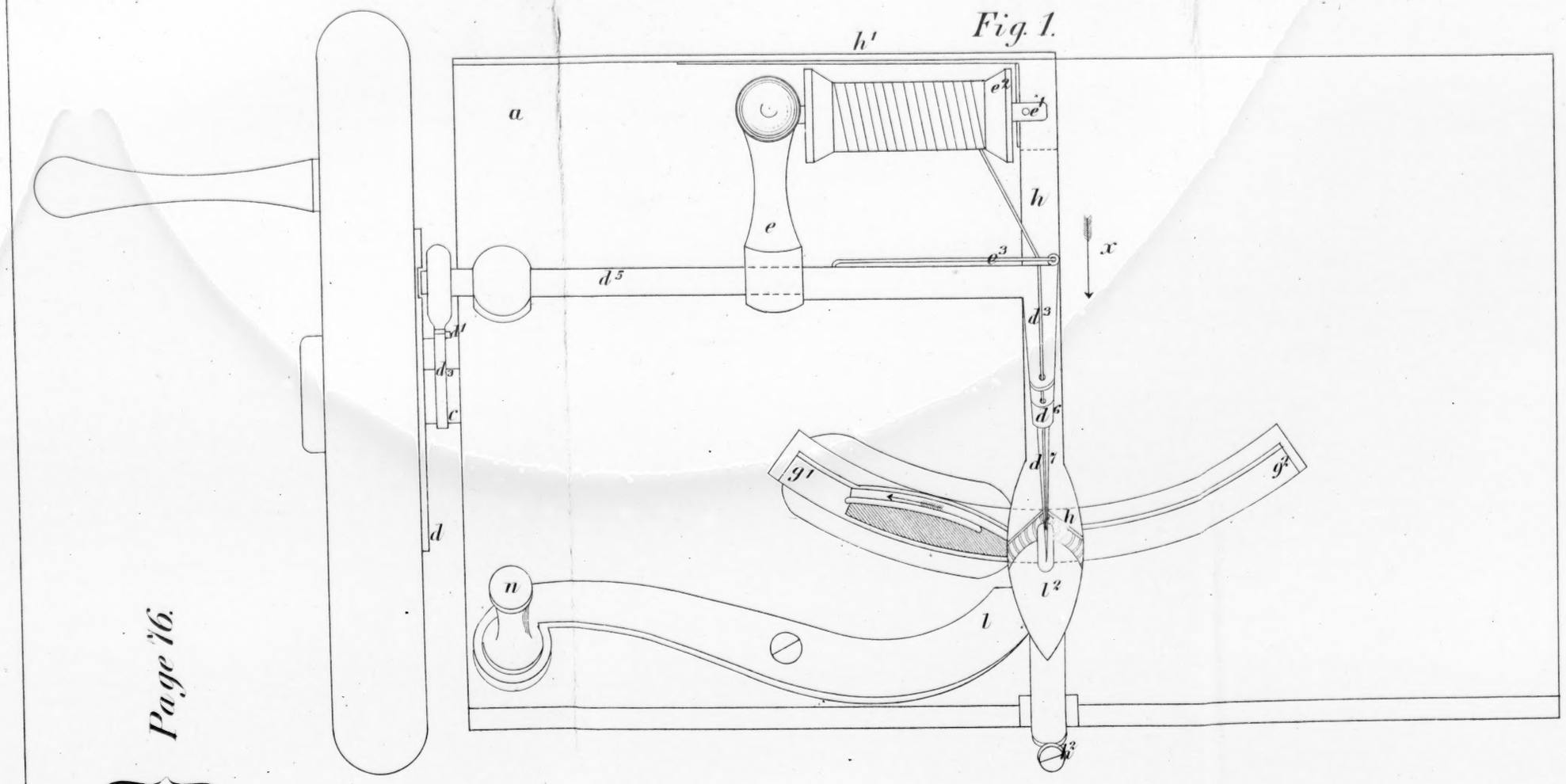
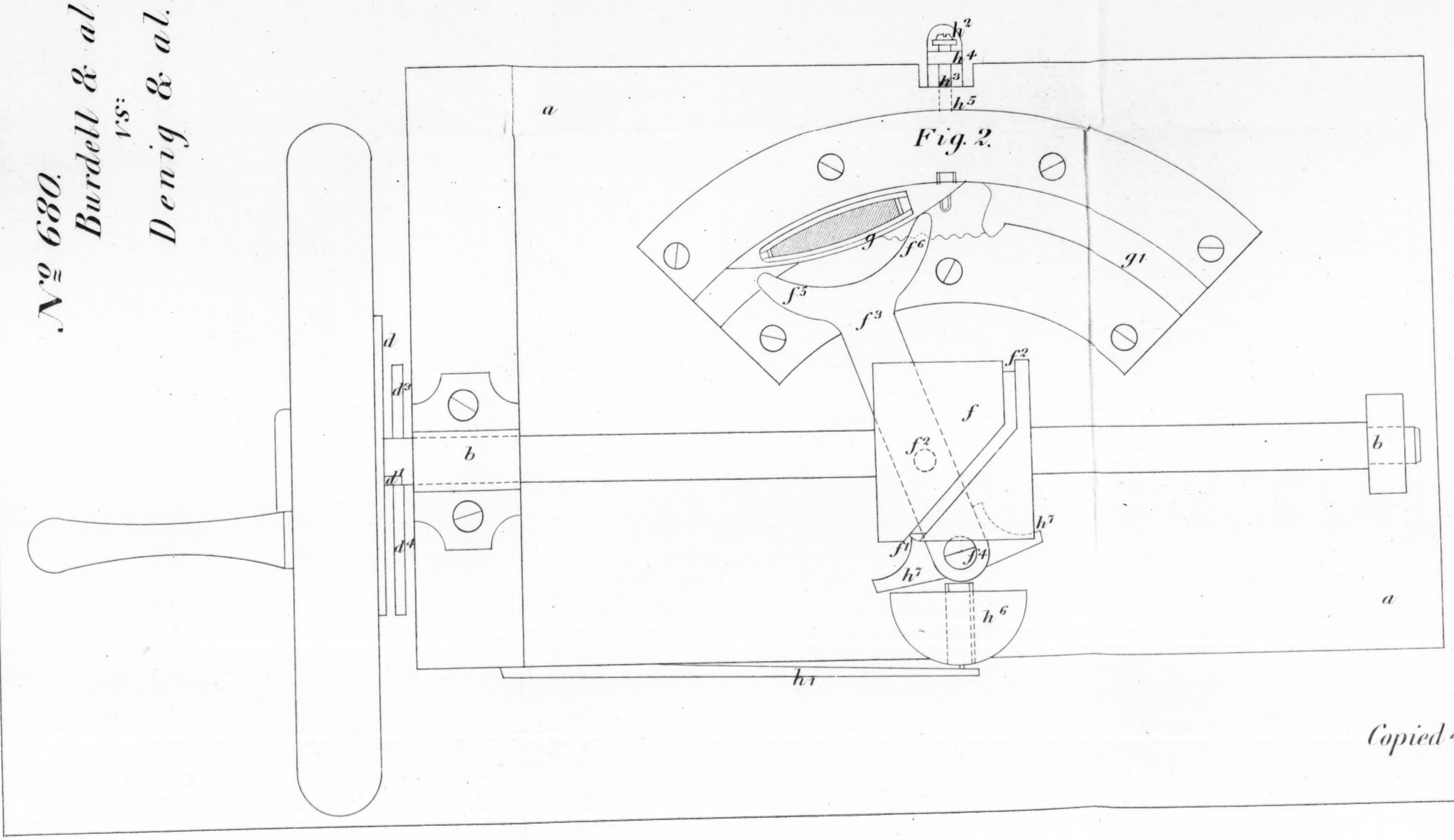


Fig. 2.



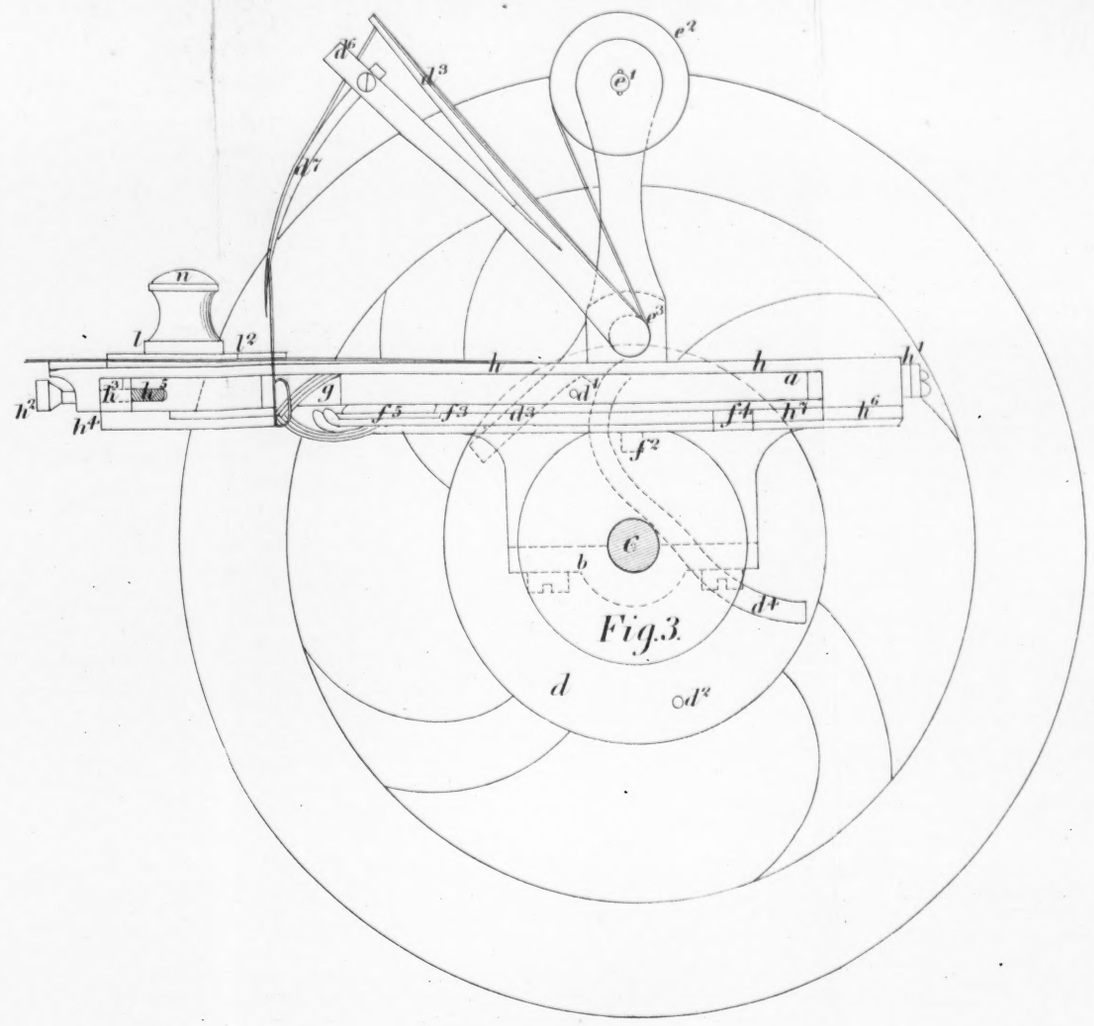


Fig. 3.

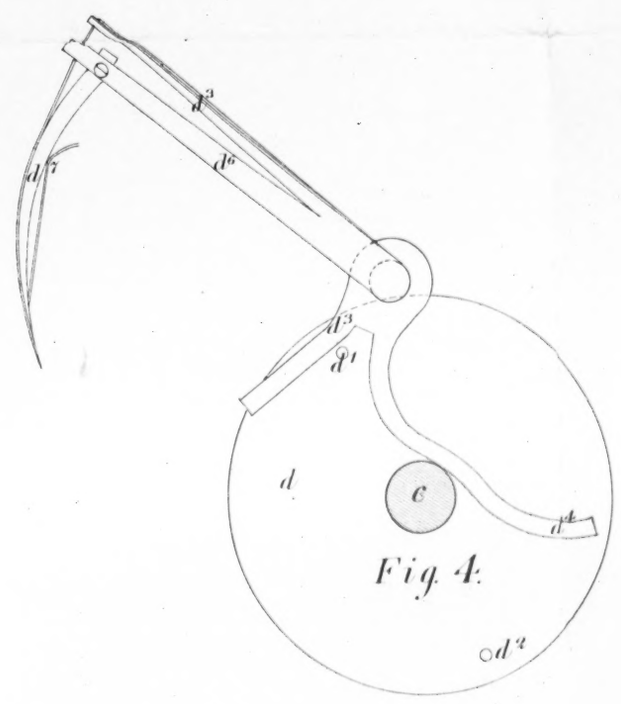


Fig. 4.

Nº 680. Burdell & al. vs. Denig & al. Page 36.

Patent
Dec^r 9: 1856.

C.

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Filed Oct. 7, 1861.

1466.

Nº 680.

Burdell & al
vs.
Denig & al

Page 88.

I. M. Singer.

Machine for Sewing Seams in Cloth and other Substances.

Nº 8294.

Patented August 12, 1851.

D.

Fig. 3.- Plan of table.

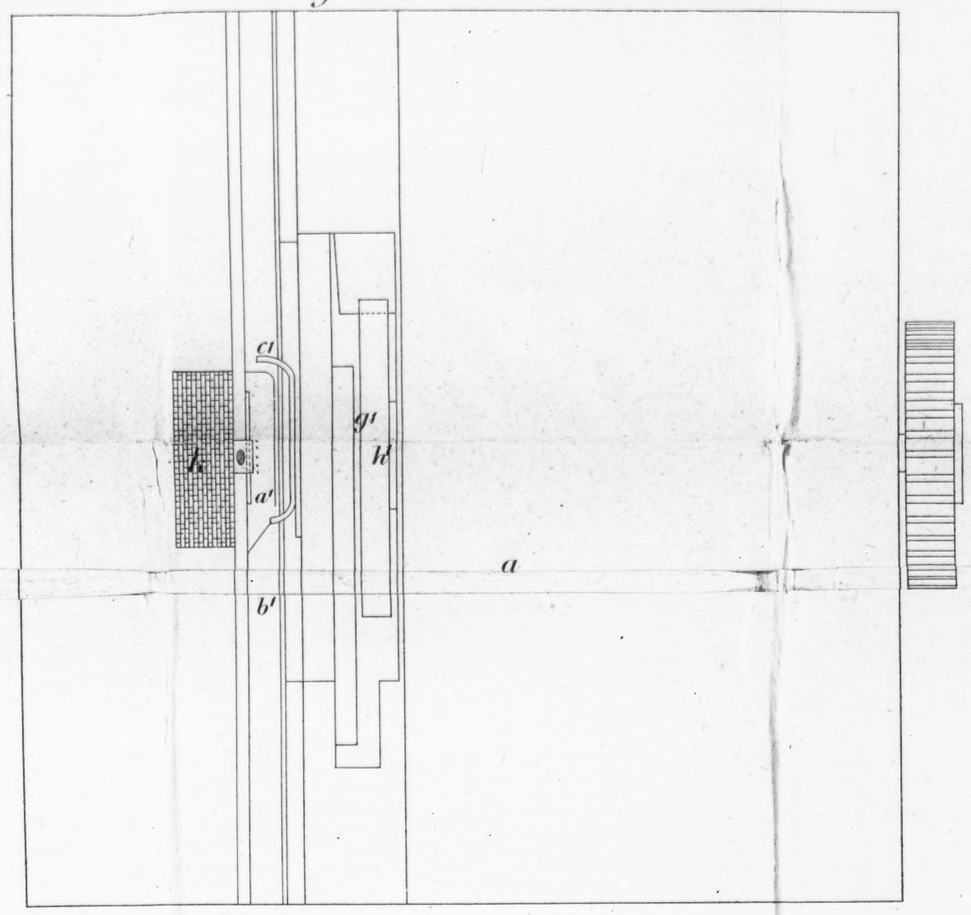


Fig. 5.

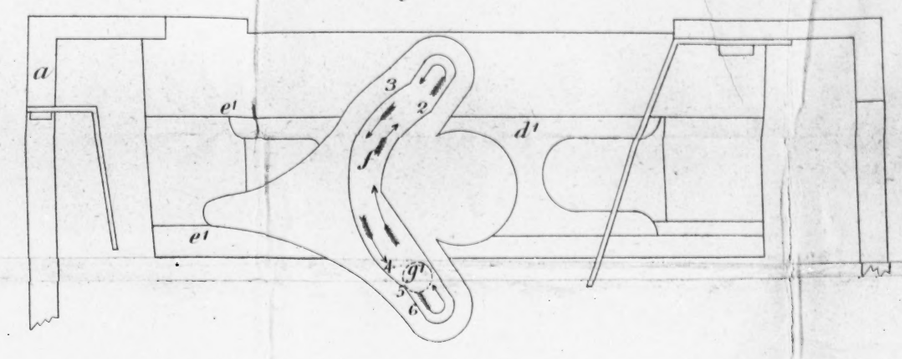


Fig. 1.

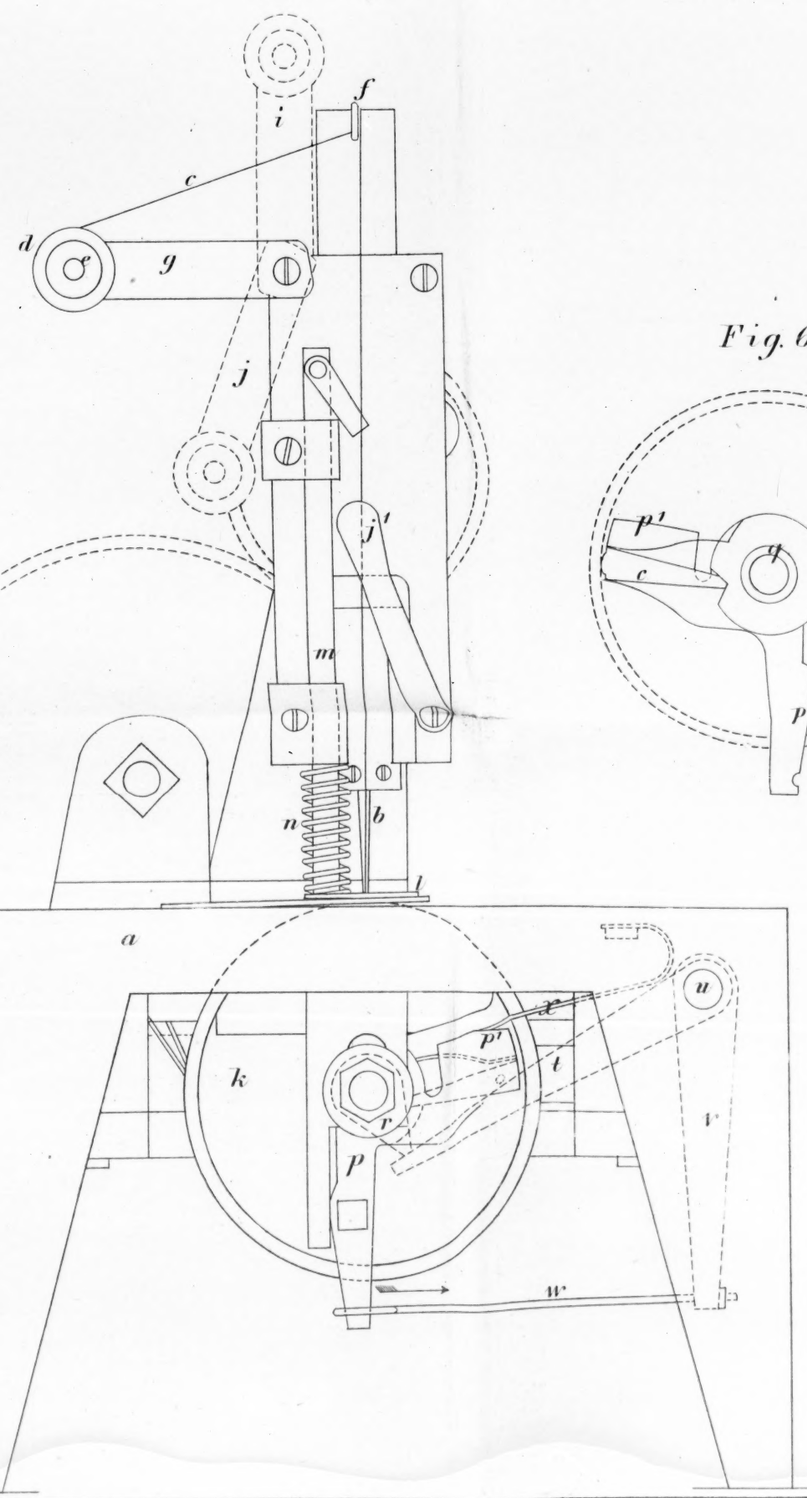


Fig. 6.

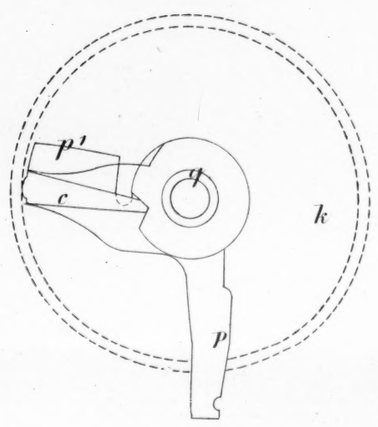


Fig. 2.

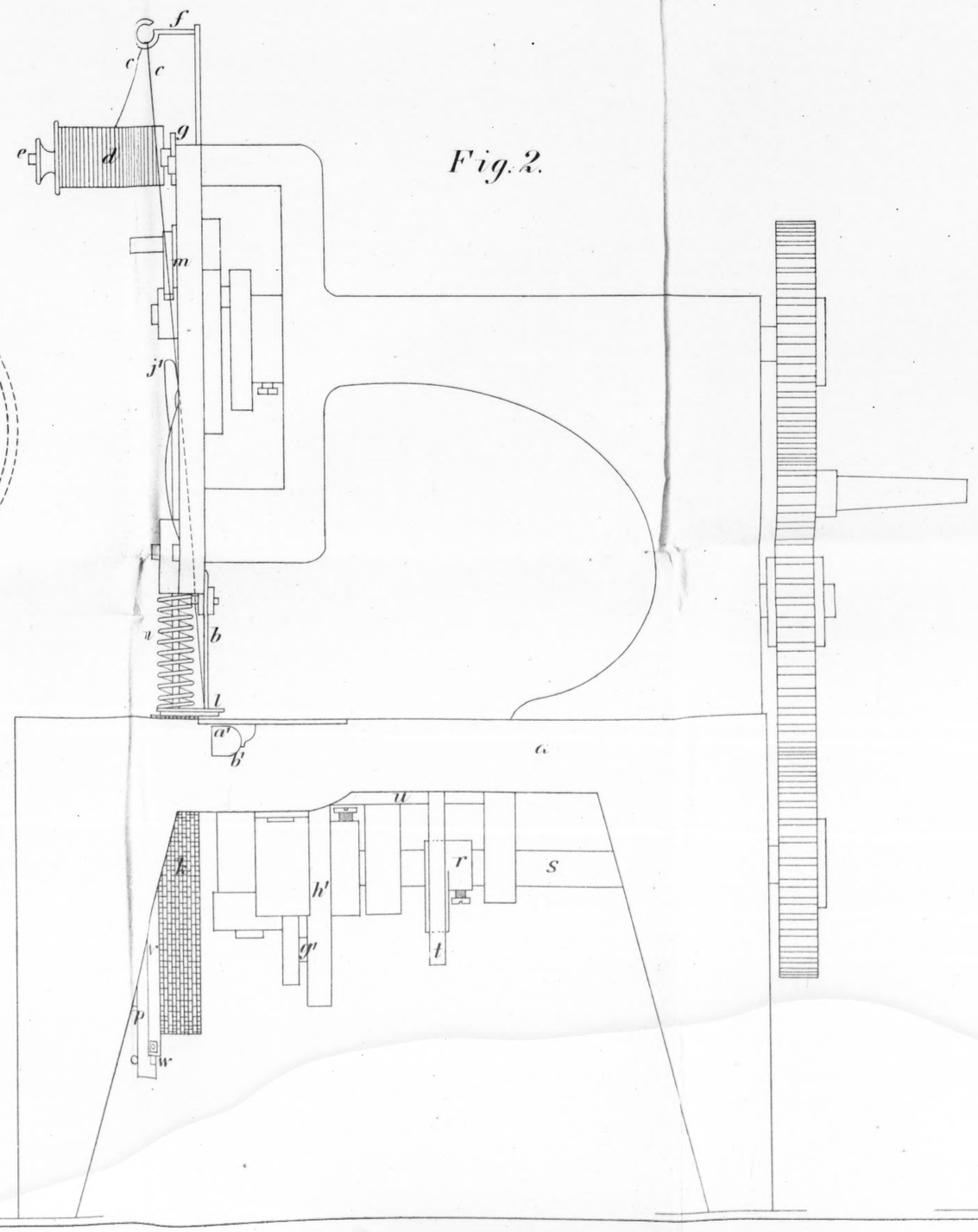
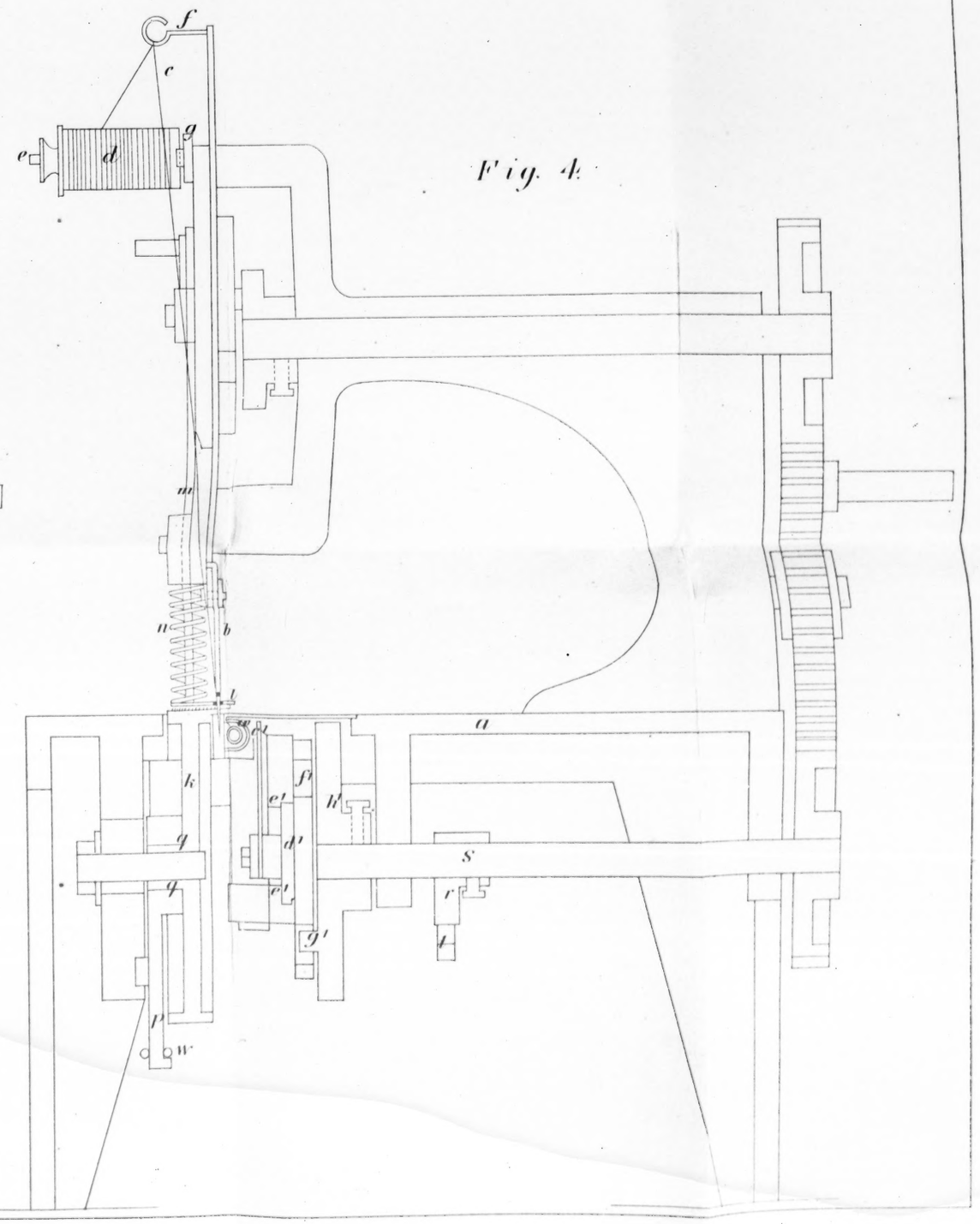


Fig. 4.



(A.)—ASSUMPTION.

2,500 Policies, insuring $10,000 each for the whole life, are in force at the end of 5 years. The age is 35 at the date of issue, and all persist, excepting those who decease, during the succeeding 10 years. Premium, $188.42; payable annually at the beginning of each year. Mortality that of the American Experience. Interest, 4 per cent. per annum.

Present age.	No. of Policies in force.	New Premiums paid in.	Fund accumulated for death claims of the insured at the end of year preceding.	Fund, including new Premiums. (Interest on same.)	Fund at the end of the year, including interest.	Death claims paid at the end of the year.
40	2,500	$471,050 00	$1,443,900 00	$1,914,950 00 76,598 00	$1,991,548 00	$240,000
41	2,476	466,527 92	1,751,548 00	2,218,075 92 87,723 04	2,306,798 96	250,000
42	2,451	461,817 42	2,056,798 96	2,518,616 38 100,744 66	2,619,361 04	250,000
43	2,426	457,106 92	2,369,361 04	2,826,467 96 113,058 72	2,939,526 68	260,000
44	2,400	452,208 92	2,679,526 68	3,131,734 68 125,269 39	3,257,004 07	260,000
45	2,374	447,309 08	2,997,004 07	3,444,313 15 137,772 53	3,582,085 68	260,000
46	2,348	442,410 16	3,322,085 68	3,764,495 84 150,579 83	3,915,075 67	270,000
47	2,321	437,322 82	3,645,075 67	4,082,398 49 163,295 94	4,245,694 43	280,000
48	2,293	432,047 06	3,965,694 43	4,397,741 49 175,909 66	4,573,651 15	290,000
49	2,264	426,582 88	4,283,651 15	4,710,234 03 188,409 36	4,898,643 39	300,000
50	2,234	----------	4,598,643 38			

Assuming that of 5,000 insured at the end of the 5th year, 2,500 should cease paying Premiums, but that in case of the death of any of them the Company should pay their Policies, on receipt of the Premium in arrears and interest, the result would be as follows:

Completed age at end of the year.	Death claims, less premium and interest.	Amount paid each year, after deducting premium and interest.	Amount paid each year beyond receipts. (Interest on same.)	Deficit at the end of each year.
40	$240,000 00			
Less prem. and interest	4,702 96	$235,297 04	$235,297 04	
41	250,000 00		9,411 88	$244,708 92
Less prem. and interest	9,993 80	240,006 20	484,715 12	
42	250,000 00		19,388 60	504,103 72
Less prem. and interest	15,292 47	234,707 53	738,811 25	
43	260,000 00		29,552 45	768,363 70
Less prem. and interest	21,635 21	238,364 79	1,006,728 49	
44	260,000 00		40,269 14	1,046,997 63
Less prem. and interest	27,595 50	232,404 50	1,279,402 13	
45	260,000 00		51,176 09	1,330,578 22
Less prem. and interest	33,794 19	226,205 81	1,556,784 03	
46	270,000 00		62,271 36	1,619,055 39
Less prem. and interest	41,778 56	228,221 44	1,847,276 83	
47	280,000 00		73,891 07	1,921,167 90
Less prem. and interest	50,556 53	229,443 47	2,150,611 37	
48	290,000 00		86,024 45	2,236,635 82
Less prem. and interest	60,139 35	229,860 65	2,466,496 47	
49	300,000 00		98,659 86	2,565,156 33
Less prem. and interest	70,580 35	229,419 65	2,794,575 98	2,794,575 98

(B.)—ASSUMPTION.

2,500 Policies, insuring $10,000 each for the whole life, are in force at the end of 5 years. The age is 35 at the date of issue, and all persist, excepting those who decease, during the succeeding 10 years. Premium, $178.77 each; payable annually at the beginning of each year. Mortality that of the American Experience. Interest, 4½ per cent. per annum.

Present age.	No. of Policies in force.	New Premiums paid in.	Fund accumulated for death claims of the insured at the end of year preceding.	Fund, including new Premiums. (Interest on same.)	Fund at the end of the year, including interest.	Death claims paid at the end of the year.
40	2,500	$446,925 00	$1,329,950 00	$1,776,875 00 79,959 37	$1,856,834 37	$240,000
41	2,476	442,634 52	1,616,834 37	2,059,468 89 92,676 10	2,152,144 99	250,000
42	2,451	438,165 27	1,902,144 99	2,340,310 26 105,313 96	2,445,624 22	250,000
43	2,426	433,696 92	2,195,624 22	2,629,320 24 118,319 41	2,747,639 65	260,000
44	2,400	429,048 00	2,487,639 65	2,916,687 65 131,250 94	3,047,938 59	260,000
45	2,374	424,399 98	2,787,938 59	3,212,338 57 144,555 24	3,356,893 81	260,000
46	2,348	419,751 96	3,096,893 81	3,516,645 77 158,249 06	3,674,894 83	270,000
47	2,321	414,925 17	3,404,894 83	3,819,820 00 171,891 90	3,991,711 90	280,000
48	2,293	409,919 61	3,711,711 90	4,121,631 51 185,473 42	4,307,104 92	290,000
49	2,264	404,735 28	4,017,104 92	4,421,840 20 198,982 81	4,620,823 01	300,000
50	2,234	----------	4,320,823 01			

Assuming that of 5,000 insured at the end of the 5th year, 2,500 should cease paying Premiums, but that in case of the death of any of them the Company should pay their Policies, on receipt of the Premium in arrears and interest, the result would be as follows:

Completed age at end of the year.	Death claims, less premium and interest.	Amount paid each year, after deducting premium and interest.	Amount paid each year beyond receipts. (Interest on same.)	Deficit at the end of each year.
40	$240,000 00	$235,516 45	$235,516 45	
Less prem. and interest	4,483 55	----------	10,598 24	$246,114 69
41	250,000 00	240,449 10	486,563 79	
Less prem. and interest	9,550 90	----------	21,895 37	508,459 16
42	250,000 00	253,348 94	743,808 10	
Less prem. and interest	14,651 06	----------	33,471 36	777,279 46
43	260,000 00	239,220 05	1,016,499 51	
Less prem. and interest	20,779 95	----------	45,742 48	1,062,241 99
44	260,000 00	233,427 77	1,295,669 76	
Less prem. and interest	26,572 23	----------	58,305 14	1,353,974 90
45	260,000 00	227,374 84	1,581,349 74	
Less prem. and interest	32,625 16	----------	71,160 74	1,652,510 48
46	270,000 00	229,551 43	1,882,061 91	
Less prem. and interest	40,448 57	----------	84,692 79	1,966,754 70
47	280,000 00	230,934 93	2,197,689 63	
Less prem. and interest	49,065 07	----------	98,896 03	2,296,585 66
48	290,000 00	231,478 20	2,528,063 86	
Less prem. and interest	58,521 80	----------	113,762 87	2,641,826 73
49	300,000 00	231,131 47	2,872,958 20	
Less prem. and interest	68,868 53	----------	----------	2,872,958 20